

*These notes refer to the Local Government Act 2003 (c.w26)
which received Royal Assent on 18th September 2003*

LOCAL GOVERNMENT ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Local Government Act 2003 which received Royal Assent on 18th September. They have been produced by the Office of the Deputy Prime Minister, with the Wales Office, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes are to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. With certain exceptions, the Act extends only to England and Wales. Section 129 governs the extent of the Act's provisions.

SUMMARY

4. The Act covers various aspects of local authorities and is in eight Parts:
 - capital finance etc and accounts (Part 1)
 - financial administration (Part 2)
 - grants etc (Part 3)
 - business improvement districts (Part 4)
 - non-domestic rates (Part 5)
 - council tax (Part 6)
 - housing finance etc (Part 7)
 - miscellaneous and general provisions (Part 8).

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TERRITORIAL APPLICATION: WALES

5. The Act has been drafted in liaison and agreement with the National Assembly for Wales and the Wales Office so that, where appropriate, it applies to both England and Wales.

6. All provisions apply to both England and Wales with the following exceptions:

- section 34 (grants for parishes) applies to England only, while section 35 (grants for community councils) makes similar provision for Wales and applies to Wales only
- section 40 and Schedule 2, taken with paragraphs 5, 12 to 17 and 22 of Schedule 7, have effect to alter the system of local government finance reports in Wales only
- sections 61 to 65 with the related provisions in Schedule 7, introduce differences between the operation of non-domestic rates in England and their operation in Wales
- section 75 (council tax: second and empty homes) applies only to billing authorities in England as Welsh billing authorities already have similar powers under section 12 of the Local Government Finance Act 1992
- section 83(1) (council tax: major precepting authorities: combined fire authorities), and paragraph 1 of Schedule 7, apply only to fire authorities in England, while section 83(2) and (3) confer power on the National Assembly for Wales in relation to Welsh fire authorities
- section 92(1) amends section 24(3) of the Housing Act 1985 so as to cause it to apply only to Wales, and section 92(2) confers power on the National Assembly for Wales to make an order repealing section 24(3) of that Act as amended by section 92(1)
- sections 99 and 100 (performance categories for local authorities), except section 100(3), apply only to England
- sections 105 and 106 (and Schedules 4 and 5) provide for a Valuation Tribunal Service which will operate only in England
- section 112 makes provision about the Standards Board for England and so does not apply to Wales
- section 115 (voting rights for co-opted members of overview and scrutiny committees) applies only in England

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COMMENTARY ON SECTIONS

PART 1: CAPITAL FINANCE ETC AND ACCOUNTS

Summary

7. The new capital finance system (like the one it replaces) sets the legal framework within which local government may undertake capital expenditure and central Government may regulate that activity.

8. The innovative feature of the new system, however, is that local authorities will be free to raise finance for capital expenditure - without Government consent - where they can afford to service the debt without Government support. There will be reserve powers for Government to set limits on borrowing and credit, but it is envisaged that these would be used only in exceptional circumstances.

Section 1: Power to borrow

9. The present wide-ranging power of an authority to borrow for purposes relevant to its functions is preserved. But the new legislation goes further and clarifies that there is power to borrow for normal treasury management purposes – for example, to refinance existing debt.

Sections 2, 6 and 13: Control of borrowing

10. The main borrowing control section 2(1) will be the duty not to breach the prudential and national limits set under sections 3 and 4.

11. Authorities will be free to seek loans from any source, but will, as now, be prohibited from borrowing in foreign currencies without the consent of Treasury, since adverse exchange rate movements could leave them owing more than they had borrowed. Various provisions in the present legislation protecting lenders to authorities will be preserved. These include the long established ‘safe harbour’ (section 6): this ensures that debts can still be enforced even if it turns out that the authority borrowed unlawfully and means that potential lenders do not need to make detailed enquiries about authorities’ borrowing powers. Section 13(3) maintains the vital principle that all of a local authority’s revenues serve as security for its borrowing.

12. The mortgaging of property will continue to be prohibited: section 13(1). It will also remain unlawful to ‘securitise’, that is, to sell future revenue streams such as housing rents for immediate lump-sums (this is implicit in section 13(1)).

Section 3: Duty to determine affordable borrowing limit

13. This provision forms the heart of the new ‘prudential’ borrowing system. It first imposes a broad duty for authorities to determine and keep under review the amount they can afford to borrow. The section then empowers the Secretary of State

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or the National Assembly for Wales to define that duty in more detail in regulations, which may in turn require authorities to have regard to specified codes of practice. The latter power will be used primarily to specify the Prudential Code being produced by the Chartered Institute of Public Finance and Accountancy (CIPFA), which will lay down the practical rules for deciding whether borrowing is affordable.

14. It will be for each authority to set its own 'prudential' limit in accordance with these rules, subject only to the scrutiny of its external auditor (special arrangements apply to the Greater London Authority and its functional bodies). The authority will then be free to borrow up to that limit without Government consent. The authority will be free to vary the limit during the year, if there is good reason. Subsection (8) ensures that the consent of the full Council is needed for the setting of the limit and any subsequent variation. Breach of the limit is prohibited by section 2(1)(a).

15. Requirements in existing legislation for authorities to balance their revenue budgets prevent the long-term financing of revenue expenditure by borrowing. However, the new system, like the present one, will confer limited capacity to borrow short-term for revenue needs in the interests of cash-flow management (see note on section 5 below).

Section 4: Imposition of borrowing limits

16. The Government, or the National Assembly for Wales will have reserve power to impose 'longstop' limits for national economic reasons on all authorities' borrowing and these would override authorities' self-determined prudential limits (set under section 3). Such limits (implemented by regulations) would only be imposed if authorities' total borrowing, albeit locally prudent, was increasing to a level which threatened the country's overall economic interests.

17. If an individual authority did not wish to undertake the full amount of borrowing permitted to it under a national limit, it would have power to transfer the spare 'headroom' to another authority, which would thereby have its borrowing capacity increased (subject to still complying with its own prudential limit).

18. There would be a similar power to impose a borrowing limit (by direction in this case) on an individual authority, to prevent it acting imprudently and borrowing more than it could afford.

19. Breach of the limits set under this section is prohibited by section 2(1)(b).

Section 5: Temporary borrowing

20. The present system allows authorities also to borrow temporarily to meet their revenue costs, pending the receipt of income due to them (for example, while waiting for council tax payments). Under the new system, foreseeable requirements for temporary revenue borrowing will be allowed for when borrowing limits are set by the authority under section 3 (or by the Government or National Assembly for Wales under section 4). Section 5 then allows extra flexibility in the event of unforeseen

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needs, by providing for the borrowing limits to increase by the amounts of any payments which are due to the authority in the year but have not yet been received.

Sections 7 and 8: Credit arrangements

21. A main aim of the present capital finance system was to regulate the innovative property leasing and hire purchase deals which some authorities used before 1990 to evade the controls on borrowing then in force. Such transactions, known collectively as ‘credit arrangements’, have the same crucial effects as borrowing – they both increase public expenditure and create significant long-term revenue commitments at the local level.

22. Credit arrangements (as defined in section 7) will continue to be treated like borrowing under the new system. Section 8 ensures that the affordability assessment under section 3 must take account not only of borrowing but also of credit arrangements. In addition, any national limit imposed under the reserve powers in section 4 would apply to both borrowing and credit.

23. The definition of credit arrangements is much simpler than under the present system, relying on the accounting concept of long-term liabilities. The power to vary that definition by regulations would be used to provide that certain liabilities (such as those relating to pensions) are excluded from the definition.

Sections 9 to 11: Capital receipts

24. Capital receipts are defined in section 9 broadly as now – i.e. as the proceeds of property sales. However, such sums will be treated as received when they become payable to the authority, rather than, as now, when actually paid. This change is simply part of the general approach of bringing definitions in line with accounting practice (see note below on sections 21 and 22) and will have no practical implications. There is power to vary this definition by regulations (section 9(3)) and it is likely that the repayment of certain loans made for capital expenditure will be, as now, defined as capital receipts.

25. The present rules requiring part of housing capital receipts to be ‘set aside’ for debt redemption will disappear. These will be replaced by new arrangements, including ‘pooling’ of a proportion of housing receipts (section 11(2)(b)), so that spending power can be redistributed to those authorities in areas with a greater need for new housing investment. This will apply to all sales proceeds obtained in cash; and to most non-money proceeds (section 10) (but disposals in return for housing nomination rights will be exempted). The pooling power will apply only to *housing* receipts and only to those which are obtained after the legislation comes into force.

26. Section 11 provides power to make regulations about the use of other capital receipts – that is, all non-housing receipts and any housing receipts which are not pooled. The intention is to ensure that such receipts will, as now, be usable only for new *capital* spending or for the repayment of debt.

27. The treatment of amounts already ‘set-aside’ under the present system will be

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specified in regulations made under section 21. The repeal of the current set-aside regime will not in itself create access to any additional resources for authorities. However, the set-aside rules were relaxed for *debt-free* authorities, giving them extra scope for capital expenditure; and a debt-free authority with unused spending capacity of that kind will still be permitted to spend those sums when the new system starts.

Section 12: Power to invest

28. For the avoidance of doubt, section 12 makes clear that authorities have power to invest, not only for any purpose relevant to their functions but also for the purpose of the prudential management of their financial affairs.

29. The power of the Secretary of State or National Assembly for Wales to issue guidance (section 15) is likely to be used to encourage authorities to invest prudently, thus preserving the safeguards of the present system but allowing greater flexibility and more local discretion.

Section 14: Information

30. This requirement to provide information is simpler than the one in the present capital finance legislation. In practice, it will mainly mean, as now, that authorities have to complete regular statistical returns to the Secretary of State or National Assembly for Wales.

Section 15: Guidance

31. Authorities will have to have regard to any guidance either issued specifically by the Secretary of State or National Assembly for Wales or identified in regulations. Guidance is likely to be needed, for example, on investments, enabling Government or the Assembly to steer authorities towards prudent options, while avoiding the rigidities of the present controls embodied in regulations (see note on section 12 above).

Section 17: External funds

32. The main effect here is to ensure that transactions by local government pension funds will, as now, be outside the capital controls. Separate regulatory systems apply.

Section 18: Local authority companies

33. The present system ensures that authorities cannot evade the capital controls by operating through companies they own or influence. That broad principle will be preserved under the new system, both for the purposes of the prudential limit and any limit imposed under reserve powers (sections 3 and 4). This section confers the powers necessary to achieve that end and relies upon concepts used in the present system in Part 5 of the *Local Government and Housing Act 1989*.

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Section 19 and Schedule 1: Application to parish and community councils

34. The borrowing of parish and town councils in England (plus charter trustees and, in Wales, community councils) is still controlled under the system in the *Local Government Act 1972* which was repealed for principal authorities in 1990. This relies upon case-by-case appraisal of applications for borrowing consent. The effect of this section is to replace the old provisions with new ones which appear in Schedule 1 to the present Act. There is some tidying up but the broad arrangements are unchanged.

Sections 21, 22 and 16: Accounting practices, “Revenue Account”, “Capital Expenditure”

35. The new system will as far as possible take standard local authority accounting practices and concepts as its starting point, thereby avoiding the need for special definitions in the legislation.

36. The legislation will provide a framework for identifying the accounting codes which are to constitute ‘proper practices’ (section 21(2)). The codes so identified will have that status for the purposes of the capital finance system and other existing legislation.

37. Some special accounting treatments may be needed for the purposes of the capital system and there will be power for the Secretary of State or National Assembly for Wales to specify accounting practices by regulation (section 21(1)).

38. Section 16 deals specifically with the definition of ‘capital expenditure’. Again, the normal accounting definition will apply, but there is power to amend this, for individual authorities (by direction) or more generally (by regulations). That power to widen the definition will be used very sparingly, but regulations are likely, as now, to classify computer software development costs as capital expenditure. Directions will again be given only in exceptional circumstances, which could, as now, include cases where authorities are faced with significant redundancy costs.

Section 23: ‘Local authority’

39. The list of bodies to be covered by the new system (section 23(1)) will be largely the same as under the present system. As now, there will be power to bring levying and precepting bodies into the system later by regulations (section 23(2)).

Section 24: Wales

40. Part 1 of the Act refers only to the Secretary of State and not also to the National Assembly for Wales. The effect of this section is that functions conferred under Part 1 on the Secretary of State are, in Wales, to be functions of the Assembly (and not functions of the Secretary of State). In section 19 and Schedule 1 this result is achieved by reliance on the concept of “the appropriate person” (defined in section 124).

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PART 2: FINANCIAL ADMINISTRATION

Summary

41. Sections 25 to 29 impose new duties on local authorities about how they set and monitor their budgets. They are designed to help ensure that authorities make prudent allowance for risk and uncertainties in their budgets, and regularly monitor their finances during the year. Largely they leave discretion with the authorities about the allowances to be made and action to be taken. But section 26 is a reserve power for the Government or National Assembly for Wales to lay down the minimum reserves that local authorities must allow for when they set their budgets.

42. The objective of section 30 is to facilitate remedial action when an authority's expenditure is forecast to exceed its resources and its chief finance officer has made a formal report to that effect.

Section 25: Budget calculations: report on robustness of estimates etc

43. Local authorities decide every year how much they are going to raise from council tax. They base their decision on a budget that sets out estimates of what they plan to spend on each of their services. Because they decide on the council tax before the year begins and can't increase it during the year, they have to consider risks and uncertainties that might force them to spend more on their services than they planned. Allowance is made for these risks by:

- making prudent allowance in the estimates for each of the services, and in addition
- ensuring that there are adequate reserves to draw on if the service estimates turn out to be insufficient.

44. This section requires an authority's chief finance officer to make a report to the authority when it is considering its budget and council tax. The report must deal with the robustness of the estimates and the adequacy of the reserves allowed for in the budget proposals, so members will have authoritative advice available to them when they make their decisions. The section requires members to have regard to the report in making their decisions.

Sections 26 and 27: Minimum reserves

45. Section 26 gives the Secretary of State power to determine minimum reserves for local authorities in England by regulation. The National Assembly for Wales is given a corresponding power in relation to local authorities in Wales. The minimum applies to the budget process: authorities would have to ensure that their budget made allowance for reserves at least equal to the minimum. Nothing in the section would prevent these reserves being used during the year, even if as a result they fell below the minimum. However, if it was forecast that this was likely to happen, section 27 requires the chief finance officer to report to the authority, at the time the following year's budget and council tax is being considered, to explain the reasons and any

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action considered necessary to prevent a repetition.

Sections 28 and 29: Budget monitoring: general; Budget monitoring: Greater London Authority

46. Local authorities need to monitor their income and expenditure against their budget, and be ready to take action if overspends or shortfalls in income emerge. These sections make this a statutory duty. If monitoring establishes that the budgetary situation has deteriorated, authorities are required to take such action as they consider necessary. This might include, for instance, action to reduce spending in the rest of the year, or to increase income, or the authority might decide to take no action but to finance the shortfall from reserves.

47. Distinct budget procedures apply to the Greater London Authority and its functional bodies, and so separate provision for these organisations is made in section 29. The monitoring duty is placed on the functional bodies and (for its own budget only) on the GLA. But, because the GLA is responsible for setting the budgets of the functional bodies, when one of these bodies identifies a budget deterioration the section requires it to report the fact and the action it proposes to take in response to the Mayor and the Chair of the London Assembly.

Section 30: Authorisation of agreements during the prohibition period

48. Under section 114 of the Local Government Finance Act 1988 a local authority chief finance officer is under a duty to report to the authority in certain circumstances. One of these circumstances is when it appears to the officer that the expenditure of the authority in a financial year is likely to exceed the resources available to meet the expenditure.

49. Under section 115 of the Act such a report has to be considered by the full council within 21 days of its issue. During the period from the issue of the report until the day after the council meeting the authority is prohibited from entering into any new agreements involving expenditure by the authority.

50. This section amends section 115 to allow the chief finance officer to except certain agreements from this prohibition. The exception applies to agreements which the officer considers likely to deal with the situation that led to the report being made or prevent it happening again. To benefit from the exception an agreement has to be authorised in writing by the chief finance officer, who must state why it is considered the agreement is eligible for exemption.

PART 3: GRANTS ETC

Chapter 1: Expenditure Grant

Sections 31 to 33: Expenditure grant

51. This new wide-ranging power will enable any Minister to make a grant for any

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purpose, capital or revenue, to any local authority. It will also enable the National Assembly for Wales to make a grant to any local authority in Wales. Save for in Wales, Treasury consent will be needed in all cases to the making of the grants. The power should largely eliminate the need in future legislation for any further specific grant-making powers. It is designed to allow authorities more flexibility in the use of resources than some existing specific powers, which constrain their use. It is also expected to provide a more convenient means of delivering a number of grants currently made under existing powers. The new power will be used, for example, to make grants in connection with service improvements by local authorities which have entered into local Public Service Agreements with the Government.

52. Grants may be made under this power to a class or category of authority. For example, grants could be made to authorities by reference to performance categories as set out in an order made under section 99(4). The conditions applied to individual grants may be differentiated by reference to these categories or may be different for an individual authority.

Chapter 2: Other Grants etc

Sections 34 and 35: Best value grant: parishes, Best value grant: communities

53. In the 2001 Local Government White Paper, the Government announced that, when legislation permitted, it would pay a grant of £30,000 per year to each 'best value' parish in England. It stated that the grant would be intended to cover audit costs and the corporate costs of carrying out work relating to best value, such as the preparation of performance plans and management of reviews. It stated also that the costs of separate best value inspections would continue to be supported through the Audit Commission.

54. The National Assembly for Wales has commissioned a research study into the role and responsibilities of community councils in Wales. This may result in some community councils taking part in the Wales Programme for Improvement which is an in-depth assessment by each authority of its own fitness to achieve continuous improvement across all of its functions. The requirements of the Wales Programme for Improvement are set out in The Local Government (Whole Authority Analyses and Improvement Plans)(Wales) Order 2002, SI 2002 No. 886 (W.101). The basis for this in primary legislation is sections 3 to 6 of the Local Government Act 1999.

Section 34: Best value grant: parishes

55. Section 34 applies to England. It permits the payment by the Secretary of State of grant to best value authorities which, under subsection (1), are defined as any parish council (sometimes known as a "town council"), or parish meeting, subject to the best value duties set out in sections 3 to 6 of the Local Government Act 1999. By virtue of the Local Government Best Value (Exemption)(England) Order (SI 2000/339), currently only 41 parish or town councils satisfy this criterion.

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Section 35: Best value grant: Communities

56. Section 35 applies to Wales. It permits the payment of Government grant to best value authorities which, under subsection (1), are defined as any community council subject to the best value duties set out in sections 3 to 6 of the Local Government Act 1999. By virtue of the Local Government Best Value (Exemption)(Wales) Order 2000 (SI 2000/1029), currently no councils meet this criterion.

57. The rest of the section has a similar structure to that of section 34 (for England, as described above). The main differences are that: the grant is made by the National Assembly for Wales, rather than the Secretary of State; no Treasury consent is required, as the Assembly sets its own budget; there is no equivalent to subsection (9) of section 34 because parish meetings do not exist in Wales.

Section 36: Grants in connection with designation for service excellence

58. This power will enable grant to be paid to best value authorities subject to any of the best value duties in sections 3 to 6 of the Local Government Act 1999, in relation to expenses they have incurred in applying for the award of a designation based on excellence in the provision of services. Where a best value authority subject to any of the relevant duties is awarded such designation the power will also enable grant to be paid as a reward for such designation and in relation to expenses incurred or to be incurred by the authority in disseminating information about best practices.

59. In England this power could be used to pay grant to best value authorities subject to the relevant duties that apply for or are awarded beacon status under the Government's Beacon Council Scheme. Beacon council grants are currently paid by the Secretary of State under the wide general Special Grant making power in section 88B of the Local Government Finance Act 1988.

Section 37: Emergency financial assistance to combined fire authorities

60. The purpose of this section is to include Combined Fire Authorities (CFAs) in the list of local authorities in section 155 of the Local Government and Housing Act 1989. This will enable the Secretary of State to pay grant to CFAs in their own right. At present Bellwin grant can only be paid to a CFA's constituent authorities, which finance the CFA in proportion to their council tax bases.

Sections 38 and 39: Loans by Public Works Loan Commissioners, Payments towards local authority indebtedness

61. The purpose of these sections is to facilitate the transfer of council housing to registered social landlords. Where a local authority transfers the ownership of its social housing to a registered social landlord, it receives a capital receipt. Section 11 of the Act states that the Secretary of State may make provision, by regulations, about the use of capital receipts. Provision is made in regulations (The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003), currently in draft. Under regulation 19 of the draft regulations, (which covers the use of all non-housing receipts and any housing receipts not pooled under regulation 11), receipts may be

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used to pay for any kind of capital expenditure, or, as the authority prefers, may be used to repay the principal of an amount borrowed or to meet liabilities under credit arrangements.

62. As a condition of consenting to the transfer, the Department requires authorities to use an amount of provision for credit liabilities equivalent to the reserved part of the housing transfer receipt to repay that part of its debt that is notionally attributable to the housing transferred.

63. It is usual for authorities' debts to be with the Public Works Loan Board, although authorities may have other debts, e.g. with private banks.

64. Normally, the reserved part of the receipt from the disposal of the housing is greater than (and therefore notionally sufficient to repay) the attributable housing debt. In areas of poor housing conditions and low rent the obligation to improve the stock to a decent standard can depress the value of the housing stock and the capital receipt the local authority will receive.

65. Where the net capital receipt is less than the local authority's housing attributable debt, the Department will agree with the local authority that on the condition that the authority extinguishes debt with the Public Works Loan Commissioners ('PWLC') to the level of its net reserved capital receipt, the Department will make a payment to extinguish the remaining housing attributable debt. The Department's payment is dependent on the local authority's payment having been made. The Department's payment is known as an 'overhanging debt payment'.

66. The payments to the PWLC are currently made in reliance on the Appropriation Acts. So far there have been ten payments made in respect of housing transfers in Burnley, Coventry, Calderdale, Blackburn with Darwen, Redcar and Cleveland, St Helen's and Knowsley, Carlisle, Bradford and Walsall.

67. The Appropriation Acts do not, however, provide an appropriate mechanism for continuing payments. No mechanism has been put in place for payments made in Wales to date.

Section 38: Loans by Public Works Loan Commissioners (PWLC)

68. Section 38 will enable the Secretary of State or the National Assembly for Wales to repay (in whole or in part) PWLC debts of certain local authorities in England and Wales who have housing functions. The debts to be repaid could include the amount of 'overhanging debt' by which the notional housing debt with the PWLC exceeds the reserved receipt from the housing transfer.

69. The types of local authorities whose debts may be repaid under section 38 are listed in subsection (5) of that section. They are the types of authority with housing functions: district councils, county councils for areas for which there are no district councils, London borough councils, the Common Council of the City of London, and

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the Council of the Isles of Scilly. In relation to Wales, they are a county council or a county borough council.

70. Section 38 allows the PWLC to determine the amount that the Secretary of State or the National Assembly for Wales must pay to extinguish a debt, or by which a payment by the Secretary of State or the National Assembly for Wales reduces a debt.

71. Section 38 allows the PWLC to refuse to accept a payment which the Secretary of State or the National Assembly for Wales proposes to make.

72. In some cases, where loans at fixed interest rates are repaid, a premium may be charged on early repayment. This could be included by the PWLC as part of the amount required to extinguish a debt under section 38.

73. These provisions will have no added public expenditure or manpower implications in England or Wales. A more general power has hitherto been used to make these payments in England. No such payments have as yet been made in Wales.

Section 39: Payments towards local authority indebtedness

74. It is also possible that in future, authorities with non-PWLC housing debts may wish to transfer housing in circumstances where the receipt from the transfer would be less than their housing debt, so that there will be an element of non-PWLC overhanging debt.

75. Section 39 will enable the Secretary of State and the National Assembly for Wales to make payments to local authorities to enable them to repay their non-PWLC debts. The types of authorities who may receive such payments are defined in section 39, and are the same as those whose PWLC debts may be repaid under section 38.

76. Under section 39, the Secretary of State or the National Assembly for Wales may specify how payments made to a local authority under this section are to be applied by the authority, and may specify which debt or debts are to be reduced or extinguished.

77. Any premium payable on the early repayment of such loans may be included as part of the amount paid under section 39 by the Secretary of State or the National Assembly for Wales to the authorities to extinguish their non-PWLC debts.

Section 40 and Schedule 2: Local government finance reports: Wales

78. The National Assembly for Wales gave a commitment in its policy statement 'Freedom and Responsibility in Local Government' (March 2001) to continuously look for ways to improve the timetable according to which information regarding the final revenue settlement for local government is published.

79. Currently, the earliest date which can be achieved for the publication of the Local Government Finance Report in Wales is early January with National Assembly

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plenary debate in mid January. A key factor in this is the availability of information from the Home Office which is not available in provisional form from England until early December. Even with this timetable, final information as to the funding of police authorities is usually not available until late January and therefore an amending report has to be prepared. This is less than satisfactory for both principal councils and precepting authorities in Wales.

80. Section 40 and Schedule 2 allow separate determinations to be made so that the report for principal authorities, specified bodies and precepting bodies (other than police authorities) in Wales can be produced in mid-December and a single final report for police authorities in Wales can be produced at the end of January. This will achieve the Welsh Assembly policy objective for principal councils and provide greater certainty and stability for police authorities.

81. Section 40 and Schedule 2 operate by inserting a new Chapter 3 (revenue support grant: Wales) into Part 5 (grants) of the Local Government Finance Act 1988. They also amend Part 3 of Schedule 8 to that Act, which provides for the distribution of non-domestic rates to be dealt with in local government finance reports. They need to be read with the amendments made by paragraphs 5, 12 to 17 and 22 of Schedule 7 to the Act. In particular, those amendments divide the existing provisions of Part 5 of the 1988 Act into Chapters, with the existing provisions about revenue support grant and local government finance reports (sections 78 to 84C) becoming a Chapter 2 that is to apply to England only. The new Chapter 3 makes provision for Wales that, except for differences introduced at the time of devolution and the new power to make two local government finance reports for a year, is substantially the same as the existing provisions that have become Chapter 2.

PART 4: BUSINESS IMPROVEMENT DISTRICTS

Introduction

82. The White Paper *Strong Local Leadership - Quality Public Services* (December 2001) gave details of Business Improvement Districts (BIDs) involving local authorities and their local businesses. Under a BID, additional services or improvements of benefit to the local community will be funded by a levy, raised from non-domestic ratepayers. However, for a BID to be established a majority of those who would be liable to pay the levy must first vote in favour. This Part of the Act contains the provisions underlying the BIDs policy.

Section 41: Arrangements with respect to business improvement districts

83. Section 41 enables a billing authority, that is a local authority which collects non-domestic rates, to make arrangements for a BID in its area, specifying the projects to be carried out under the BID, funded from a levy on specified ratepayers.

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Section 42: Joint arrangements

84. Section 42 confers on the Secretary of State or National Assembly for Wales the power to prescribe rules governing BIDs which cross billing authority boundaries, allowing authorities to have joint BIDs.

Section 43: Additional contributions and action

85. Section 43 (read with section 58) allows the billing authority, and the county councils and parish councils (in England) or the community councils (in Wales), among others to contribute to BID funds.

Section 45: The BID levy

86. Section 45 provides that a BID levy can only be raised while BID arrangements are in force, and provides that the levy is to be calculated in accordance with the arrangements. The BID levy is not limited to being calculated on the basis of rateable value. This section also allows a BID levy to be different for different cases, which means relief(s) could be provided from the BID levy. (These reliefs would not necessarily be of the same nature or level as reliefs already given in respect of rates for empty properties etc).

Section 46: Liability for BID levy

87. Section 46 provides that BID arrangements must specify who is liable for the BID levy, and that a person's liability is to be determined in accordance with the arrangements.

Section 47: BID Revenue Account

88. Section 47 provides that a billing authority which has made BID arrangements must keep a separate account for the BID levy revenue, i.e. the revenue is ring-fenced and may only be used for BID purposes.

Section 48: Administration of BID levy etc

89. Section 48 provides that the Secretary of State or National Assembly for Wales may make regulations governing the imposition, administration, collection, recovery and application of BID levy.

Section 49: BID proposals

90. Section 49 provides that BID arrangements are not to come into force unless proposals for them are approved by a ballot of the ratepayers who are to be liable for the BID levy, and empowers the Secretary of State or the National Assembly for Wales to make regulations governing the drawing up of BID proposals and the content of the proposals.

Section 50: Approval in ballot

91. Section 50 provides for the requirements which must be satisfied in a ballot to secure the approval of a BID. There will be a two-part vote. A majority of those voting must vote in favour, and the total rateable value of the properties of those

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voting for must be more than that of those voting against.

Section 51: Power of veto

92. Section 51 provides that the circumstances in which the billing authority may veto a BID proposal which has been approved in a ballot may be prescribed by the Secretary of State or National Assembly for Wales. The Secretary of State or Assembly may also prescribe the matters which the billing authority must consider before it may veto a BID proposal.

Section 52: Appeal against veto

93. Section 52 provides for an appeal to the Secretary of State or National Assembly for Wales against a billing authority's veto of a BID proposal which has been approved in a ballot.

Section 53: Commencement of BID arrangements

94. Section 53 provides that when proposals for a BID have been approved in a ballot, the billing authority must draw up arrangements reflecting those proposals. It also provides that those arrangements will come into force on the day provided for in the proposals, except where the Secretary of State or National Assembly for Wales has allowed an appeal against a billing authority's veto, in which case the arrangements will take effect on such day as the Secretary of State or Assembly determines (which shall not be a day earlier than the one in the proposals).

Section 54: Duration of BID arrangements etc

95. Section 54 provides that BID arrangements can have effect at most for five years, unless their renewal is approved by a ballot of the ratepayers liable for the levy. It also empowers the Secretary of State or National Assembly for Wales to make regulations governing the alteration and termination of BID arrangements.

Section 55: Regulations about ballots

96. Section 55 empowers the Secretary of State or National Assembly for Wales to make regulations governing ballots on BIDs, such as the time which must pass between a BID proposal being made and the ballot being held and for the recovery of the costs of a ballot from persons.

Section 56: Power to make further provision

97. Section 56 empowers the Secretary of State or National Assembly for Wales to make supplementary, incidental or consequential amendments in relation to BIDs.

Section 57: Crown application

98. Section 57 provides that this Part of the Act applies to the Crown.

Section 58: Wales

99. Section 58 provides that the role of the Secretary of State in relation to BIDs will in Wales be exercised by the National Assembly for Wales.

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Section 59: Interpretation

100. Section 59 provides definitions of terms used in this Part of the Act, including ‘non-domestic ratepayer’, which is defined as someone liable to pay rates on a property shown in a local rating list for an area.

PART 5: NON-DOMESTIC RATES

Section 60: Submission of proposed rating lists

101. Under sections 43(4) and 54(4) of the Local Government Finance Act 1988 the rate bill of a property is its rateable value multiplied by the national rate multiplier.

102. Every five years on 1 April all properties are re-valued by the valuation officers. Under the current legislation - sections 41(5) and 52(5) of the 1988 Act - the rating lists have to be published in draft 3 months before they come into force on 1 April. To give ratepayers more time to plan ahead to accommodate changes in their rateable values this section requires publication 6 months before.

Section 61: Small business relief

103. Research published by the Government shows rates to be an especially heavy burden for small businesses, accounting for a significantly higher proportion of operating profits than in the case of larger businesses. This section will allow a reduction in the rate bills of small businesses, funded in England (see section 64) by a supplement on the bills of other ratepayers.

104. Section 61 amends section 43 of the Local Government Finance Act 1988 so that where specified conditions are met the rate bill for a property will be reduced by an amount prescribed by the Secretary of State, as respects England, and National Assembly for Wales, as respects Wales.

105. The section confers on the Secretary of State, and as the case may be, the National Assembly for Wales the power to prescribe the details of the scheme. This power will be used to implement the scheme as set out in the White Paper *Strong Local Leadership - Quality Public Services* (December 2001). In England, mandatory rate relief will be available at 50% for properties up to £3,000 rateable value, and will then decline on a sliding scale as rateable value increases reaching no relief at £8,000 rateable value. In England, to qualify for relief a business will have to apply to the local authority declaring that it only occupies the one property for which it is claiming relief.

106. Section 61(7) provides that billing authorities in Wales may grant discretionary relief to top up the mandatory small business relief scheme in Wales.

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Section 62: Calculation of non-domestic rating multiplier

107. Funding small business relief in England: Schedule 7 to the Local Government Finance Act 1988 sets out the rules for calculating the national rating multiplier. Section 62 provides for two multipliers instead of, as now, one. The two will be:

- a small business non-domestic rating multiplier, and
- a non-domestic rating multiplier.

In Wales, the current position remains unchanged - there will only be one multiplier, the non-domestic rating multiplier.

108. In England, for any year in which a small business rate relief scheme is run under section 61 the second multiplier, the non-domestic rating multiplier, will be set at a higher level than the small business non-domestic rating multiplier. The second multiplier will be increased so as to produce an addition to rate yield equal to the rate yield lost through small business relief. In the case of the City of London special provision is made. The City currently has the power to set a multiplier for its area either higher or lower than the national multiplier (paragraph 9 of Schedule 7 to the Local Government Finance Act 1988). Section 62(11) provides that the small business non-domestic rating multiplier for the City will be the same proportion of the City's multiplier as the national small business multiplier is of the national multiplier.

109. Offsetting losses in yield from appeals – England and Wales: there are special rules in paragraph 4 of Schedule 7 to the Local Government Finance Act 1988 on the calculation of a multiplier in the year of a revaluation. Under the 1988 Act, all non-domestic properties are revalued every five years starting in 1990. The purpose of such revaluations is not to change the yield from rates in real terms, but to redistribute the rate burden in line with movements in the property market since the last revaluation. If there is a significant increase in total rateable value at a revaluation then the multiplier must be reduced. If there is a significant decrease in value the multiplier must be increased. Thus in a revaluation year the calculation of the multiplier includes an adjustment to offset changes in the total rateable value between 31 March, the last day of the old list, and 1 April, the first day of the new lists. However the value for 1 April is subject to ‘erosion’, through subsequent successful appeals by ratepayers for reductions in rateable values having retrospective effect from 1 April (generating refunds to ratepayers in respect of rates paid from that date). Therefore the Secretary of State, as respects England, and National Assembly for Wales, as respects Wales, is required to estimate what will be shown for 1 April once the effect of successful appeals has been allowed for. It is this estimate which is then taken as the value for 1 April when making the adjustment to the multiplier to offset the effect of the revaluation.

110. This estimate is difficult to make. Accordingly section 62 allows adjustments in the multipliers for subsequent years to compensate for any error in estimation at the revaluation.

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Section 63: Rural settlement lists etc

111. This section repeals for Wales the mandatory and discretionary rate relief in the rural rate relief scheme (which is established by provisions in sections 42A, 43(6B) and 47(3A) of the Local Government Finance Act 1992) through amending the existing provisions so that they apply to England only. The repeals will be brought into force by commencement order made by the National Assembly for Wales.

Section 64: Rate relief for community amateur sports clubs

112. This section amends sections 43, 45, 47, 48 and 67 of the Local Government Finance Act 1988. Sections 43, 45, 47 and 48 of the 1988 Act provide mandatory and discretionary rate relief for both the occupied and unoccupied rates.

113. Registered community amateur sports clubs (CASC's) under Schedule 18 to the Finance Act 2002 will be eligible for mandatory and discretionary rate relief as provided under the relevant sections of the Local Government Finance Act 1988. The section also makes discretionary rate relief unavailable to registered CASC's that occupy excepted premises. Excepted premises are properties occupied by local authorities, precepting authorities etc.

114. In addition, the section also amends the section 67 of the 1988 Act to take account of the provisions for retrospective registration and de-registration in paragraph 11 of the Schedule 18 to the Finance Act 2002. The section makes it clear that a registered CASC's right to rate relief starts on the date of registration (even where that date is a retrospective date) and ends with the date of termination of registration (even if that date is a retrospective date).

Section 65: Transitional relief

115. Transition schemes were established at the 1990, 1995 and 2000 revaluations to allow ratepayers time to adjust to changes in their bills, with both significant increases and decreases resulting from changes in rateable values being phased in by annual stages. This section provides that in future in England there always must be a transition scheme established at a revaluation: the current provision, section 58 of the Local Government Finance Act 1988 confers a power on the Secretary of State to establish a scheme, but does not impose a duty on him to do so. As a result of subsection (2) of the section, section 58 will in future apply in Wales only. The 1988 Act originally required transition schemes to be self-financing: the amount of rate income lost in any year through phasing in increases in bills had to be off-set by the rate income gained from phasing in decreases. The Act was however subsequently amended to allow the Exchequer, i.e. the general taxpayer, to contribute to the cost of transition schemes. Under both the 1990 and 1995 schemes there was a net loss in rate income which the Exchequer made good so that local authorities did not lose out.

116. This section imposes the requirement for future transition schemes in England to be self-financing. It allows for this to be achieved by adjusting the chargeable amount or the component elements through which the chargeable amount is calculated. The methods likely to be used include making a transition scheme which

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balances the rates lost through phasing in increases in bills against the rates gained by phasing in decreases, or meeting the costs of phasing in increases through what in effect amounts to a supplement on the multiplier. This section allows for either approach or a combination.

117. The details of future transition schemes in England - the maximum annual increases allowed in bills and whether they are to be funded by the phasing of decreases or through what in effect amounts to a supplement on the multiplier - will be decided in the light of the outcome of each revaluation, during the year before it takes effect. Section 65 accordingly provides for the details of schemes to be prescribed in regulations.

Section 66: Rating of meters

118. Gas, electricity and water meters used to measure supply to consumers are subject to rating where the meters belong to the operator of the supply network.

119. The utility markets are being opened up to competition. This applies to competition in the provision of gas and electricity metering services. There has not been any decision on whether there should be competition in water metering services; most water supply to domestic properties is unmetered.

120. However under present rating legislation the network operators could face unfair competition from new companies providing separate metering services. At present no rates are payable in respect of a meter attached to a distribution network where the meter does not belong to the network operator. Thus while a network operator has to pay rates on its meters, its competitors in the provision of metering services would not pay rates on their meters attached to that operator's network.

121. Section 66 makes meters subject to rating whether they belong to the network operator or a separate metering company. (Meters which belong to the consumer will however, as now, be outside rating.)

Section 67: Exemptions for agricultural buildings

122. Schedule 5 to the Local Government Finance Act 1988 sets out the conditions that must be met if land and buildings are to be deemed to be agricultural and thereby entitled to exemption from rates. Section 67 amends the Schedule to reflect modern farming practices so that where farmers work on other agricultural land, perhaps on a share or contract basis, or through the pooling of resources or machinery, the exemption will apply.

123. Section 67 also amends the Schedule with regard to premises used for ancillary activities such as food processing and packaging. At present, the exemption applies provided that the occupier of the premises is a company and any of the members of that company is an occupier of related agricultural land. The amendments will ensure that the exemption will only apply to such premises where the company is

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controlled by occupiers of related agricultural land.

Section 68: Exemptions for places of religious worship

124. Under paragraph 11 of Schedule 5 to the Local Government Finance Act 1988, a place of public religious worship is exempt from non-domestic rates if it belongs to the Church of England or the Church in Wales or is certified as required by law as a place of religious worship. Certification is carried out at present under the Places of Worship Registration Act 1855. Section 41 of the Marriage Act 1949 provides that certified places of religious worship may apply for and be registered by the Registrar General for the purposes of marriage. Under proposals in the White Paper 'Civil Registration: Vital Change' marriages would be able to take place anywhere and it would no longer be necessary for certified places of religious worship to be registered for the purposes of marriage. As a consequence it is likely the 1855 Act will be repealed. Section 68 amends the exemption so that a certificate is no longer required as proof of entitlement to the exemption.

Section 69: Removal of power to prescribe rateable values

125. Under paragraph 3 of Schedule 6 to the Local Government Finance Act 1988 the Secretary of State or National Assembly for Wales may disapply the standard rules for determining rateable values contained in paragraph 2 of the Schedule and instead prescribe values by order. This power was used in 2000 to prescribe rateable values for properties such as the railways, ports and harbours, and gas, electricity and water supply networks.

126. Section 69 will repeal paragraph 3 of Schedule 6. As a consequence at the next revaluation on 1 April 2005 all properties will be valued by valuation officers using the rules in paragraph 2, with all ratepayers having a right of appeal to independent valuation tribunals if they think their rateable values incorrect: where values are prescribed there is no such right of appeal.

Section 70: Local retention of non-domestic rates

127. Schedule 8 to the Local Government Finance Act 1988 provides that non-domestic rates revenues collected by billing authorities must be paid to the Secretary of State who then distributes them to local authorities. This section inserts new provisions into paragraphs 4 and 5 of Schedule 8 to the 1988 Act amends section 99 of the 1988 Act and amends section 38 of the Local Government (Wales) Act 1994. The amendments enable the Secretary of State, as respects England, and the National Assembly for Wales, as respects Wales, to put in place a scheme to allow the local retention of non-domestic rates.

128. This will allow the Secretary of State and the National Assembly for Wales to implement a local authority business growth incentives scheme, announced by the Chancellor of the Exchequer in the Pre-Budget Report in Autumn 2002. The Deputy Prime Minister and the Chancellor of the Exchequer jointly launched a consultation document on 4 July 2003 which outlines the principles behind the scheme and suggests a number of options. The scheme will provide a financial incentive for

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business and local authorities to work in partnership to maximise local economic growth and regeneration while at the same time generating additional resources to address local priorities.

129. The section confers powers on the Secretary of State and the National Assembly of Wales to make rules regarding the local retention of rates revenue. New paragraph 4(4A) (inserted by subsection (1) of section 70) allows some or all of a billing authority's rates revenue to be retained, based on rules. New paragraph 4(4B) excludes the City of London Corporation from the scheme. However, the Secretary of State is able to provide for the local retention of rates revenue of the Corporation under existing City of London Corporation legislation. New paragraph 4(4D) requires the Secretary of State to obtain consent of the Treasury when setting up the scheme in England. Treasury consent would not be required in Wales.

130. Subsection (2) of section 70 amends paragraph 5 of Schedule 8 to the 1988 Act, to require the billing authority to notify the Secretary of State, as respects England, and the National Assembly for Wales, as respects Wales, of the amount of non-domestic rates revenue that it is retaining locally under the rules set by the Secretary of State or the National Assembly for Wales. It also requires the billing authority to arrange for the District Auditor to certify the amount so retained. Subsection (3) of section 70 requires the Audit Commission to forward a copy of this certificate to the Secretary of State or National Assembly for Wales.

131. Subsections (4), (5) and (6) of section 70 amend section 99 of the Local Government Finance Act 1988 to enable the Secretary of State to allocate the retained revenue between major precepting authorities, as he sees fit. This enables the allocation of the retained revenue between various tiers of local government. Subsections (7), (8) and (9) of section 70 amend section 38 of the Local Government (Wales) Act 1994 to allow the National Assembly for Wales to do the same thing in Wales. Paragraph 58 of Schedule 7 to the Act amends the 1994 Act to facilitate the Assembly's new regulation-making powers.

Section 71: Adjustments for hardship relief

132. Local authorities which collect rates ('billing authorities') may grant hardship relief to ratepayers under section 49 of the Local Government Finance Act 1988. But if they do so they must meet a prescribed percentage of the cost of granting this rate relief: they have to pay this sum to the Secretary of State or the National Assembly for Wales. The percentage is set in regulations which because of the provisions of Schedule 8 to the Act cannot be amended in respect of a financial year after the preceding 31 December. Section 71 will allow an amendment to the regulations reducing (but not increasing) the percentage of hardship relief to be met by authorities to have effect in respect of a particular year even if made after 31 December of the preceding year.

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Section 72: Provision of information

133. Rateable values are based on rental values. In preparing for a revaluation the valuation officers therefore send forms requesting rental information to a selection of ratepayers. A ratepayer who does not return a form within 21 days is at risk of being convicted of a criminal offence (paragraph 5 of Schedule 9 to the Local Government Finance Act 1988).

134. Section 72 will extend the period by which forms must be returned to 56 days, and will replace the criminal sanction with fixed civil penalties.

PART 6: COUNCIL TAX

Section 74: Exception of students from joint and several liability

135. Section 6 of the Local Government Finance Act 1992 ('LGFA 1992') provides, broadly speaking, that where two or more people have an equal legal interest in a dwelling, they shall be jointly and severally liable to pay the council tax.

136. Section 9 provides that spouses and a man and a woman who live together as husband and wife are jointly and severally liable to pay the council tax, even if they do not have an equal legal interest in the dwelling.

137. At present, students, as defined in paragraph 4 of Schedule 1 to the LGFA 1992, are disregarded for the purpose of a discount. Therefore, the liability for council tax for a dwelling whose residents were a student and someone who is not a student (and is not otherwise disregarded) would be calculated as if the dwelling had only one resident, and would therefore be subject to a 25% discount under section 11 of the LGFA 1992. Other categories of people, including the severely mentally impaired, are also disregarded for the purposes of council tax under Schedule 1 to the LGFA 1992.

138. Exempt Class N, contained in the Council Tax (Exempt Dwellings) Order 1992 (S.I. 1992/558), made under section 4 of the LGFA 1992, provides an exemption from council tax in certain circumstances for dwellings occupied solely by students or occupied as term-time accommodation by students.

139. However, where a dwelling is occupied by a student and non-student, although disregarded for the purpose of a discount, the student can still be held jointly and severally liable for council tax, under either section 6(3), or, where the student and non-student are spouses as defined in section 9 under section 9(1).

140. Section 74 amends sections 6(4) and 9(2) of the LGFA 1992 to remove students from joint and several liability where they are a spouse or living with someone as husband and wife, or where they have an equal legal interest in the dwelling, for financial years beginning on or after 1 April 2004.

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141. Exemptions already apply where students and people with a severe mental impairment live together and there are no other residents.

Sections 75 and 76: Discounts and exemptions

Section 75: Discounts - special provisions for England and Wales

142. Section 11 of the LGFA 1992 provides for nationally set council tax discounts. Currently under section 11(1) there is a discount of 25% where there is only one resident, or all but one of the residents fall to be disregarded for council tax purposes, and under section 11(2) there is a discount of 50% where there is no resident or all residents fall to be disregarded. Billing authorities in Wales already have power under section 12 of the LGFA 1992 to reduce from 50% to 25% or, to remove, the discounts which would otherwise apply under section 11. English authorities have no such power at present.

143. Subsection (1) of section 75 inserts a new section 11A into the LGFA 1992 which enables the Secretary of State to prescribe by regulations classes of dwellings in England where a billing authority may change the level of council tax discount. Under subsection (3), the Secretary of State may prescribe a class of dwellings where the billing authority may reduce but not remove the discount, and the regulations may not allow for the discount to be less than 10%. It is proposed to make regulations under this subsection to define a class of second homes which are not owned by persons required to live in tied accommodation elsewhere because of their work. Under subsection (4), the Secretary of State may prescribe a class of dwellings where the billing authority may reduce or remove completely the discount. It is proposed to make regulations under this subsection to define a class of long term empty homes (which are not exempt dwellings). In either case, the billing authority may determine to change the discount in all or part of its area. Subsection (5) requires the authority to make such a determination before the start of the financial year, and subsection (6) requires such determinations to be published in newspapers circulating locally.

144. Subsection (2) of section 75 replaces the existing section 12 of the LGFA 1992 with a new version, giving the National Assembly for Wales (“the NAW”) and Welsh billing authorities equivalent powers to those conferred by subsection (1) on the Secretary of State and English billing authorities. Subject to the exercise of these powers by the NAW, Welsh billing authorities will be able to do so for only part of their areas.

145. Subsections (3), (4) and (5) of section 75 are transitional provisions. They preserve in force the effect of existing regulations prescribing classes of dwellings for which Welsh billing authorities can reduce the 50% discount to 25% or zero, and preserve the effect of any existing determinations to reduce discounts made by Welsh authorities. While section 75 will give Welsh authorities greater flexibility, these transitional provisions ensure that Welsh authorities are not forced to take new decisions if they would not have decided differently under the new powers.

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Schedule 7: Minor and Consequential amendments

Paragraphs 41, 42, 49 and 50: determinations to reduce discounts

146. Paragraph 41 of Schedule 7 amends section 11 of the LGFA 1992 to make clear that any discount under that section must take effect subject to any determination the authority has made, under the new section 11A inserted by section 75, to reduce or remove discounts.

147. Paragraph 42 amends section 13(3) of the LGFA 1992 to ensure that any reductions under regulations under section 13 apply on top of any discounts under s11A.

148. Paragraph 49 of Schedule 7 amends section 66 of the LGFA 1992 to provide that a determination by a billing authority to reduce or remove the discount under the new section 11A or 12 of the LGFA 1992, inserted by section 75, can only be challenged by judicial review.

149. Paragraph 50 of Schedule 7 amends section 67 of the LGFA 1992 to require the determination to reduce or remove discounts in accordance with the new section 11A or section 12 inserted by section 75 to be made by the full council and not delegated.

Section 76: Billing authority's power to reduce amount of tax payable

150. Under the LGFA 1992, dwellings may be exempt from council tax if they fall within one of the exempt dwelling classes set out in an order made under section 4 of that Act (S.I. 1992/558). The amount of council tax payable may be subject to a discount under section 11 (where there is one or no resident, or all, or all but one of, the residents fall to be disregarded), or in Wales, under section 11 to the extent that the authority has not exercised the discretion under section 12 to reduce the discount. Finally, the amount may be reduced through the effect of regulations made under section 13 of the LGFA 1992, e.g. where it is occupied by a disabled person: see the Council Tax (Reductions for Disabilities) Regulations 1992 (S.I. 1992/554). All of these exemptions, discounts and reductions are prescribed in orders or regulations made by the Secretary of State, or in Wales, the National Assembly for Wales.

151. Billing authorities do not, at present, have a discretion to grant further discounts and exemptions, or to remit or waive council tax on hardship grounds. Authorities do not have the power to respond to hard cases which do not fall within any of the centrally prescribed categories.

152. Section 76 inserts a new section 13A into the LGFA 1992 which will give billing authorities in England and Wales a broad discretion to reduce the amount of council tax payable as respects a dwelling, to such extent as they think fit. Subsection (2) of the new section 13A provides that this may include reducing the amount payable in respect of a day to nil.

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153. Authorities may exercise this power in individual cases (e.g. individual hardship, in cases where the taxpayer is not eligible for council tax benefit, for example, where the dwelling is not their sole or main residence). Or they may determine classes of case in which liability is to be reduced (i.e. the equivalent of authorities determining exempt dwellings classes, or reductions in circumstances other than those prescribed in regulations under section 13 of the LGFA 1992).

Schedule 7: Minor and Consequential amendments

Paragraph 53(3): treatment of discretionary reductions for council tax administration purposes

154. Paragraph 53(3) of Schedule 7 amends Schedule 2 to the LGFA 1992 by inserting a new paragraph 21, in consequence of section 76.

155. Paragraph 21(2) of Schedule 2 to the LGFA 1992 provides that where an authority has made a determination of a class of case in which council tax liability is to be reduced to nil, the dwelling shall be treated as an exempt dwelling for the purposes of Schedule 2 to the LGFA 1992. Paragraphs 8, 9 and 10 of Schedule 2 to the LGFA 1992 allow regulations to be made in relation to exempt dwellings. Such regulations could also be made in relation to dwellings subject to a 100% reduction under section 76 as a result of paragraph 53(3) of Schedule 7. These could, for example, require the billing authority to notify the person who would otherwise be liable for council tax of various matters. These include the dwelling's entry in the valuation list, any assumptions made that a 100% reduction applies, and requiring the person to notify the billing authority if he has reason to believe that the assumptions were inaccurate.

156. Where the authority's determination is to reduce the amount payable for the class of dwellings other than to nil, the new paragraph 21(3) inserted into Schedule 2 of the LGFA 1992, provides for the dwelling to be treated for the purposes of that Schedule as if it were subject to a discount (i.e. a discount under section 11 or section 12 of that Act). Regulations may be made under paragraphs 4 and 5 of that Schedule e.g. requiring the authority to take reasonable steps to ascertain the applicability of any discounts, notify the liable person of assumptions made following such steps, requiring the taxpayer to notify it if he believes the assumptions to be incorrect. Such regulations could also be made, as a result of paragraph 53(3) of Schedule 7, in relation to discretionary reductions.

Sections 77 and 78: Valuation Lists and Bands

Section 77: Statutory revaluation cycle

157. For non-domestic rates, there is a statutory requirement (under the Local Government Finance Act 1988) for new valuation lists to be compiled every 5 years (commonly known as revaluation, since the rateable values of hereditaments subject to the non-domestic rate are included in the lists under section 42(4) of that Act). However, there is currently no such requirement for council tax valuations to be

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updated, and new council tax valuation lists prepared, under the Local Government Finance Act 1992 ('LGFA 1992').

158. Dwellings are currently included on valuation lists originally drawn up on 1 April 1993, and assigned to one of eight valuation bands based on their 1 April 1991 values. At present, under the LGFA 1992, a revaluation will only take place for council tax if the Secretary of State (or in Wales, the National Assembly for Wales ('the NAW')) makes an order under section 5(4) of the LGFA 1992 substituting new bands for the current valuation bands, with new lists based on a new valuation date prescribed under section 25 of the LGFA 1992.

159. Section 77 inserts section 22B into the LGFA 1992, which will provide for a statutory revaluation cycle for the council tax in England and Wales. Section 22B(2) will require new lists to be compiled and come into force for England on 1 April 2007 and 1 April 2005 in Wales.

160. Section 22B(3) requires that further new lists must be compiled and come into force no more than ten years after the date of the previous (2005 and 2007) lists. This means that the period between revaluations will be no longer than 10 years. However, the Secretary of State (for England) and NAW will be able to make orders under that section to require the compilation of new lists (and hence revaluation) sooner. The Secretary of State's orders will be subject to the affirmative resolution procedure (subsection (11)).

161. Subsections (4) and (5) of section 22B provide for the coming into force of new lists and their maintenance. Subsection (6) provides for the listing officers to take such steps as are reasonably practicable to ensure that lists are accurately compiled - it is this subsection which in effect provides for the revaluation of dwellings.

162. Subsections (7) to (10) of section 22B impose certain duties on the listing officers to compile and send copies of the new lists to billing authorities and for billing authorities to deposit the lists at their principal offices and give notice that they have done so.

163. Subsections (4) to (10) closely follow provisions in section 22 of the LGFA 1992 which provided for the original council tax lists to be compiled, except that in future the listing officer will be required by section 22B(7) to send a proposed (i.e. draft) list to the billing authority on one occasion rather than two as required in section 22(5) of the LGFA 1992.

Schedule 7: Minor and Consequential amendments

Paragraphs 44 to 48, 52 and 53(2): amendments consequential on section 77

164. Dwellings are currently assigned to a valuation band based on their 1 April 1991 values, in accordance with section 21(2) of the LGFA 1992. Paragraph 44 of

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Schedule 7 amends section 21, by inserting new subsections (2A) and (2B) to enable valuations to be as at a new valuation date. The new date will be either two years before the date the next revaluation is due (e.g. for the first English revaluation, 1 April 2005); or, a date during that two year period specified in regulations made by the Secretary of State or NAW.

165. Paragraph 45 of Schedule 7 ensures that an original list will remain in force until the date on which the new list is compiled.

166. Paragraph 46 of Schedule 7 amends section 24(9)(b) of the LGFA 1992. Section 24 allows the Secretary of State to make regulations about the alteration of valuation lists. Subsection (9)(b) currently refers to copies of lists deposited by the authority under section 22(8) or section 22A(10) (which related to the compilation of new lists following local government reorganisation in Wales). New lists will be deposited under section 22B(10), not section 22(8), so paragraph 46 amends section 24(9)(b) to refer to section 22B(10).

167. The current section 25 of the LGFA 1992 enables the Secretary of State (in Wales, the NAW) to require a new valuation list to be compiled and decide the new valuation date and when the new list should come into effect. This general power is being replaced by a fixed revaluation cycle. Paragraph 47 of Schedule 7 will make section 25 no longer effective.

168. The current section 28(2)(a) of the LGFA 1992 governs a person's right to inspect the valuation lists. Paragraph 48 of Schedule 7 will apply that right to the new lists, and proposed new lists, compiled under section 22B.

169. Paragraph 52(4) of Schedule 7 amends section 113(3) of the LGFA 1992. Section 113(3) provides that all orders or regulations made by the Secretary of State or the Treasury under that Act shall be subject to the negative resolution procedure, save for listed exceptions. Paragraph 51 adds to the list of exceptions orders under the new section 22B(3)(a), i.e. orders bringing forward revaluations from the 10 year cycle, which will be made by affirmative resolution procedure (see subsection (11) of the new section 22B inserted by section 77). Paragraph 52 also amends section 113 to provide that any power of the National Assembly for Wales to make orders or regulations under the LGFA 1992 shall be exercisable by statutory instrument.

170. Paragraph 8 of Schedule 2 to the LGFA 1992 enables regulations to be made requiring billing authorities to notify owners of exempt dwellings of the valuation band the property has been assigned to in proposed lists. Paragraph 53(2) of Schedule 7 enables such regulations to cover the new lists, and proposed new lists, prepared under section 22B.

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Section 78: Power to change number of valuation bands

171. There are currently eight valuation bands (A-H), with different bands in England and Wales, set out in subsections (2) and (3) respectively of section 5 of the LGFA 1992. Under section 5(4)(b) of the LGFA 1992 the Secretary of State (in Wales, the NAW) has power to substitute different bands for the existing bands. Section 78 amends section 5 of the LGFA 1992, by inserting a new subsection (4A) which makes clear that the Secretary of State (in Wales, the NAW) can vary the number of bands at the time of revaluation. The Secretary of State's orders under section 5 of the LGFA 1992 (including under new subsection (4A)) will be subject to affirmative resolution procedure in the House of Commons.

Section 79: Transitional arrangements

172. Revaluation is likely to affect the amount of council tax individual households pay. New bands with new thresholds will be substituted, by order under section 5(4)(b) LGFA 1992, for the existing bands set out in subsections (2) and (3) of that section, as part of the revaluation process, since dwelling values have increased since the original thresholds were set. Dwellings may go up one or more bands whilst others may go down.

173. When the council tax was introduced, transitional reductions regulations were made under section 13 of the LGFA 1992. However, section 13 only allows regulations to be made which would reduce what would otherwise be the council tax liability for the dwelling.

174. Section 79 inserts section 13B into the LGFA 1992. This section will enable the Secretary of State and the National Assembly for Wales to make regulations to phase in changes to council tax bills following revaluation, i.e. following the compilation of new lists under section 22B inserted by section 77, or following the making of an order under section 5 substituting new valuation bands or different ratios between the bands.

175. Section 13B(3) will allow regulations to provide for the council tax liability in respect of a particular dwelling to be higher or lower than it would otherwise be. Liability may be made higher than it would otherwise be where a dwelling moves down one or more bands as a result of revaluation, and lower, where a dwelling moves up one or more bands. The equivalent section which applies to non-domestic rating (currently section 58 of the Local Government Finance Act 1988, but see also the new section 57A inserted by section 65 of the Act) contains similar provision to allow increases as well as decreases in what would otherwise be the liability.

176. Subsections (3) and (4) of the new section 13B give flexibility to develop schemes which will cover one or more years and to apply different rules in different years.

177. Subsection (5) enables regulations under the new section 13B to make consequential amendments to social security legislation. This may be needed for

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council tax benefit purposes.

Sections 80 to 82: Enforcement

178. Schedule 4 to the LGFA 1992 enables the Secretary of State (in Wales the NAW) to make regulations allowing local authorities to secure payment of any outstanding sum specified in a liability order. A liability order must be obtained from the magistrates' court before any of the other enforcement steps can be taken. The detailed requirements are set out in the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613).

Section 80: Amendments relating to distress

179. Under paragraph 5 of Schedule 4 to the LGFA 1992, regulations can be made allowing billing authorities to make an attachment of earnings order, so that the outstanding council tax can be recovered by requiring the debtor's employer to deduct amounts from the debtor's pay. Quite often, a local authority only finds out about a debtor's employment details late in the enforcement process, after the authority has tried other enforcement mechanisms provided by regulations under Schedule 4, including seeking to levy distress (permitted by regulations under paragraph 7 of Schedule 4), and if that proves unsuccessful, by applying to magistrates for a warrant to commit the debtor to prison (permitted by regulations under paragraph 8 of Schedule 4).

180. For example, a person may only reveal their employment details during a hearing of an application for a warrant of commitment, since the magistrates are required to inquire into the debtor's means before they can issue a warrant of commitment. Where this happens, rather than proceed with the hearing of an application for a warrant of commitment, the billing authority is likely to serve an attachment of earnings order. However, only the amount specified in the original liability order can at present be recovered through attachment of earnings. This will include the outstanding amount of council tax, plus a sum in respect of the costs of obtaining the liability order (in accordance with regulations made under paragraph 3 of Schedule 4 to the LGFA 1992). It will not, however, include any costs incurred trying to levy distress after the issue of the liability order or any costs incurred during the committal hearing itself.

181. Section 80(1), (2) and (3) will enable costs incurred in trying to levy distress or incurred during the aborted hearing of an application for a warrant of commitment to be recoverable through an attachment of earnings order.

182. Section 80(4) amends paragraph 7 of Schedule 4 to the LGFA by inserting a new sub-paragraph (4A). This will enable regulations to be made by the Secretary of State (in Wales the NAW) to prescribe information which authorities or bailiffs must supply to debtors when distress has been levied or when distress has been attempted unsuccessfully. The existing paragraph 7(4)(a) of Schedule 4 only allows the imposition of requirements on local authorities to supply information prior to the levy of distress. There are no powers to impose requirements to supply information when

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the process is complete or when someone tries to levy distress but fails.

Schedule 7: Minor and Consequential amendments

Paragraph 54: Exercise of powers by the NAW under section 80

183. Paragraph 54 of Schedule 7 amends Schedule 4 to the LGFA 1992 in consequence of subsections (2) and (3) of section 80. These subsections refer to prescribed amounts in relation to the costs of the application for commitment which can be included in the attachment of earnings order.

184. Paragraph 54 of Schedule 7 defines prescribed as prescribed in regulations made by the Secretary of State, in relation to England, and by the NAW in relation to Wales. Because subsections (2) and (3) confer a new power on the Secretary of State to prescribe amounts in regulations, this power has not already been devolved to the NAW under the National Assembly for Wales (Transfer of Functions) Order 1998 (S.I. 1998/672) which provided for other functions under Schedule 4 (except those under paragraph 6) to be exercisable by the NAW.

Section 81: Charging orders: aggregation

185. Paragraph 11 of Schedule 4 to the LGFA 1992 enables billing authorities to apply to the county court for a charge against the debtor's dwelling for which the council tax remains unpaid, in respect of a liability order made by the magistrates' court. Regulation 50 of the Council Tax (Administration and Enforcement) Regulations 1992 stipulates that at the time of the application for the charging order, at least £1000 of the amount for which the liability order was made must remain outstanding.

186. Section 81 enables local authorities to aggregate two or more liability orders made against the same person to meet the £1000 threshold for making an application for a charging order. The section inserts a new paragraph 11A into Schedule 4 to the LGFA 1992 to allow regulations made under that Schedule to include appropriate provision.

Section 82: Quashing of liability orders

187. When a taxpayer falls behind with their council tax, billing authorities have to apply to the magistrates' court for a liability order before they can seek to use various powers to recover the debt. There are relatively few defences against the making of a liability order - these include the fact that an amount has not properly been demanded or that the amount has been paid. Unless a defence is accepted by the court, the order will be granted. In practice very few are refused.

188. However, it can emerge after the order has been made that a mistake has occurred, for example, the taxpayer may later find receipts proving that he had paid. In such cases, no action should be taken under the liability order. However, some taxpayers view the liability order as an unwarranted stain on their character and demand that the liability order be deleted from the record. At present, this can only be

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achieved on application to a higher court. The cost involved is unwarranted where there is no dispute about the facts.

189. Section 82 (which inserts into Schedule 4 to the LGFA 1992 a new paragraph 12A) allows the Secretary of State (in Wales the NAW) to make regulations giving magistrates' courts powers to quash a liability order if the court is satisfied that the liability order should not have been made. This only applies where the local authority has applied to have the liability order quashed. It does not give council taxpayers a right to require magistrates' courts to reconsider all liability orders made.

190. New paragraph 12A(b) enables regulations to be made permitting the magistrates' courts to substitute a liability order for a lower amount where it considers that a liability order could properly have been made had it been made for that lower amount (which would include a sum for the costs incurred in obtaining the original order).

Section 83: Major precepting authorities: combined fire authorities

191. Section 83(1) adds combined fire authorities ('CFAs') in England established under section 6 of the Fire Services Act 1947 ('FSA 1947') to the list of major precepting authorities in section 39(1) of the LGFA 1992. Twenty four CFAs were established in the former county council areas affected by local government reorganisation in England between 1996 and 1998. These CFAs were established by combination schemes set out in orders made by the Secretary of State under section 6 of the FSA 1947. The constituent authorities (whose representatives make up the CFAs) are district and county councils, or in some areas just district councils.

192. At present, section 5(2)(c) of the FSA 1947 requires combination scheme orders to include provision for the contribution to the expenses of CFAs by the constituent authorities. Under these orders, the constituent authorities currently contribute to the CFA's expenses in proportion to their council tax bases.

193. As major precepting authorities, CFAs will be required under section 40 of the LGFA 1992 to issue a precept or precepts for each financial year. The precepts will be issued to billing authorities (district councils) in their areas. Each precept will have to state the amount of council tax that has been calculated for each category and band of dwelling in the area, and the total amount payable to the CFA by the council to which it is issued.

194. Paragraph 1 of Schedule 7 amends section 6 of the FSA 1947. Its effect is that combination scheme orders made for CFAs in England need not contain provisions as to the contributions to the CFA's expenses to be made by the constituent authorities. Such provision will not be required as Chapter 4 of Part 1 of the LGFA 1992 will make the appropriate provision instead.

195. Part 2 of Schedule 8 details the extent of the revocation of the provisions in the combination scheme orders which currently provide for the contributions of the

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constituent authorities to the CFA's expenses, consequent on section 83(1). These provisions will not be needed since the provisions in Chapter 4 of Part 1 of the LGFA 1992 which govern the calculation and issue of precepts will apply instead to determine authorities' contributions.

196. Subsection (2) of section 83 provides a power to allow the National Assembly for Wales to make an order to add Welsh CFAs to the list in section 39(1) of the LGFA 1992. Subsection (3) provides that the National Assembly for Wales should consult such representatives of local government and other bodies and persons as it considers appropriate, before it exercises the order-making power.

197. The National Assembly for Wales would (by virtue of section 123 of the Act) be able to include in such an order the necessary consequential amendment to section 6(1A) of the Fire Services Act 1947 (which is to be inserted by paragraph 1 of Schedule 7), so that combination scheme orders for Welsh combined fire authorities need not contain provisions as to the contributions to the CFA's expenses to be made by the constituent authorities. Section 123 would also allow the National Assembly for Wales to make consequential amendments, equivalent to those contained in Part 2 of Schedule 8, to the combination scheme orders establishing the Welsh combined fire authorities.

Section 84: Amendment of section 67 of the Local Government Finance Act 1992

198. Section 84 amends section 67 of the LGFA 1992 so that a full council meeting is no longer required to adopt the council tax base that is used when setting council taxes.

199. The items T referred to in paragraphs (a), (c) and (f) of subsection (2A) to be inserted into section 67 of the LGFA 1992 by subsection (3) of section 84, are the tax bases for the whole of an authority's area (respectively, for a billing authority, major precepting authority other than the Greater London Authority ("the GLA"), and the GLA). Billing authorities must notify major precepting authorities of their tax bases in a prescribed period: the tax base for the whole of a major precepting authority's area is the aggregate of that for the billing authorities in the area. The Local Authorities (Calculation of Council Tax Base) Regulations 1992 (S.I. 1992/612) (as amended) set out how these amounts are calculated, and how they are determined if a billing authority fails to notify the major precepting authority.

200. The items TP referred to in paragraphs (b), (d) and (e) of subsection (2A) are the tax bases for the relevant part of an authority's area to which a special item relates. They are respectively for part of a billing authority's area (e.g. the area of a parish for which the parish council issues a precept), part of the area of a major precepting authority other than the GLA (e.g. the area of part of a county in respect of which a levy is issued to a county council) and part only of a billing authority's area, which forms part of a major precepting authority's area in respect of which the major precepting authority has power to issue precepts. Item TP2 in section 89(4) of the Greater London Authority Act 1999, referred to in paragraph (g), is the tax base for

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the Metropolitan Police District (i.e. the area of the London boroughs only) in respect of which the Metropolitan Police Authority, financed through the GLA, provides police services.

201. Paragraph (h) of subsection (2A) makes clear that a full council meeting is not needed when e.g. a major precepting authority determines the tax base for part of a billing authority's area as part of determining its own tax base (e.g. where the billing authority had failed to notify it of its tax base during the prescribed period).

Section 85: Vacant dwellings: use of council tax information

202. Billing authorities will collect information about the numbers of empty (vacant) homes in their area which are exempt dwellings for council tax purposes. Many local authorities employ empty property officers whose role is to identify empty homes and develop policies and initiatives to bring them back into use. The presence of empty homes can lead to social, economic and environmental problems (e.g. reduce neighbouring property values, encourage vandalism and increase the pressure on housing stock and land for development).

203. The LGFA 1992 does not contain clear provision allowing information collected pursuant to council tax powers under that Act, to be used for other purposes. The Information Commissioner has issued guidance advising authorities that they cannot use council tax data for other purposes.

204. Section 85 inserts a new paragraph 18A into Schedule 2 to the LGFA 1992 to allow a billing authority to use information it has obtained for the purpose of carrying out its council tax functions for the purpose of identifying vacant dwellings or taking steps to bring vacant dwellings back into use. New subparagraph 18A(2) limits the extent of personal information which may be shared to an individual's name or an address or number (e.g. telephone number) for communicating with him.

205. The Government is conscious that it is arguable that allowing the use for other purposes of personal data collected for council tax purposes may in some circumstances constitute an interference with an individual's right to privacy protected by article 8 of the European Convention on Human Rights. It is considered that any data sharing permitted under section 86 does not interfere with an individual's right to privacy. The data will be used only by the billing authority which collected it and it will be used only for public functions in the public interest. Section 85 does not permit disclosure to third parties such as commercial organisations.

Section 86: Repeal of section 31 of the Local Government Act 1999

206. Section 31 of the Local Government Act 1999 was needed to help implement the council tax benefit subsidy limitation scheme which required authorities to contribute to the costs of council tax benefit where their council tax exceeded a threshold set by the Government. Section 31 allowed regulations to be made requiring payments by major precepting authorities (county councils, police authorities, the Greater London Authority, metropolitan county fire and civil defence

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authorities) whose council tax exceeded the thresholds, to billing authorities (in England, district councils, London borough councils, the Common Council of the City of London, the Council of the Isles of Scilly, county councils with the functions of district councils, and in Wales, the county and county borough councils). Billing authorities are responsible for administering council tax benefit.

207. With effect from 1 April 2002, the scheme was no longer operated in England. The NAW had ceased to operate the scheme earlier in Wales.

208. Section 31 is redundant and this section repeals it.

Schedule 7: Minor and Consequential amendments

Paragraph 43: Completion notices

209. When new dwellings are nearing completion, billing authorities can serve a 'completion notice' on the owner of a building if it can reasonably be expected to be completed within three months, under section 17 of the LGFA 1992 which applies Schedule 4A to the LGFA 1988 for the purposes of the council tax. A completion notice specifies the day which the authority proposes as the completion day for the building.

210. There is a right of appeal to a valuation tribunal against a completion notice under paragraph 4 of Schedule 4A of the LGFA 1988. Paragraph 4(2) of Schedule 4A provides that where an appeal is not withdrawn or dismissed, the completion day shall be such day as the tribunal shall determine. Paragraph 5 of Schedule 4A provides that where no appeal is brought, or any appeal is dismissed or withdrawn, the day stated in the notice shall be the completion day in relation to the building.

211. However, section 17(4) of the LGFA 1992 contains an error. Section 17(4) defines 'the relevant day' in relation to a completion notice, for the purposes of section 17(3). Section 17(3) provides that where a completion notice is served under Schedule 4A to the LGFA 1988 and the building to which the notice relates is not completed on or before the relevant day, any dwelling in which the building or any part of it will be comprised shall be deemed for the purposes of Part 1 of the LGFA 1992 to have come into existence on that day (i.e. on the relevant day).

212. In paragraphs (a) and (b) of section 17(4) of the LGFA 1992, the words 'an appeal' and 'no appeal' appear to have been transposed. The effect is that, if the provision is applied literally, if an appeal against the completion notice is successful, the relevant day in relation to a completion notice will remain the day shown in the notice. However, where no appeal is made against the notice, the relevant day will be the day determined under the Schedule, i.e. on appeal, by the tribunal.

213. If an appeal against a completion notice is upheld, the date of the completion notice should be the date determined by the tribunal. Conversely, if there is no

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appeal, the date should be the original date on the notice.

214. Paragraph 43 of Schedule 7 rectifies this error. Paragraph 43(2) of Schedule 7 provides that the correction will apply to any completion notice served on or after the day of coming into force of that section. It will also apply to any completion notice served prior to that date which is or becomes subject to an appeal on or after the coming into force of that section.

PART 7: HOUSING FINANCE ETC

Sections 87 and 88: Local housing strategies and statements, and Housing Revenue Account business plans

215. A local housing strategy is the local housing authority's vision for housing in its area. It sets out objectives and targets and policies on how the authority intends to manage and deliver its strategic housing role and provides an overarching framework against which the authority considers and formulates other policies on more specific housing issues.

216. In England, local housing strategies are currently prepared by local housing authorities. They are set out in specific documents – dissemination of the housing strategy to key service users, key stakeholders and other interested parties is an important part of the strategic housing role. These documents are made available to and appraised by the Government Offices for the Regions to ensure they are “fit for purpose” i.e they are capable of delivering the local authority's housing function to the standard demanded by Government. They are currently sent to the Government Offices pursuant to section 65 of the Local Government and Housing Act 1989. In Wales, the Welsh Assembly Government has asked local housing authorities to have local housing strategies in place by April 2004. Previously, it asked authorities to prepare annually a “housing strategy and operational plan”.

217. There has not, until now, been a statutory provision which specifically requires local housing authorities to have a housing strategy. Section 87 puts local housing strategies on a statutory basis to reflect the Government's belief that a robust strategy is essential to the delivery of local authorities' housing functions.

218. Local housing strategies are among a number of housing plans, policies and strategies which local authorities are required or asked to prepare by central Government or the Welsh Assembly Government. One is the non-statutory Housing Revenue Account business plan, relating to the management of the authority's own housing stock, prepared by local housing authorities in England who maintain a Housing Revenue Account. These are also submitted by authorities to the Government Offices for the Regions. Others are the Homelessness Strategy prepared by local housing authorities in England and Wales pursuant to the Homelessness Act 2002 and the reports on home energy conservation measures prepared under the

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Home Energy Conservation Act 1995.

219. The current guidance on local housing strategies in England and Wales stresses the importance of addressing all relevant issues, including homelessness and energy efficiency of housing stock in the strategy. Local housing strategies are also expected to be consistent with the community strategies prepared by authorities under section 4 of the Local Government Act 2000.

220. In many cases there may be considerable overlap between the material included in the different documents and it may not always be properly linked.

221. It is expected that a document prepared by an authority under subsection (2) of section 87 will be known as the “Local Housing Strategy”. But it will be for the authority to decide what to call such a document in the light of its contents. The section enables a local housing authority to be required to include in its Local Housing Strategy material that is currently set out in separate documents. However even where an authority is not required to do that, it will normally have the freedom to include in its Local Housing Strategy some or all of the material that would otherwise be set out in separate documents. Accordingly, an authority will be free to produce just a single housing document, or a number of documents, as best suits its local circumstances.

222. Section 87 therefore draws a distinction between formulating and having a strategy, and promulgating this, e.g. through a document recording or setting out that strategy.

223. If the authority was required only to prepare a statement setting out that authority’s policy or strategy on housing or related matters, then if the authority had formulated no such policy or strategy, it would simply prepare a statement saying that it had no such policy or strategy on that particular issue.

224. Section 87(1) allows the appropriate person (defined in section 124 as the Secretary of State, in relation to authorities in England, and the National Assembly for Wales, in relation to authorities in Wales) to require local housing authorities to have a strategy on certain specified matters relating to housing. In order to have such a strategy, authorities will have to have considered the relevant issues and formulated policies to achieve certain ends. Subsection (1)(b) provides that requirements can be imposed as to the ends the strategy must achieve (e.g. the availability of better quality housing in the authority’s area), the formulation of policy for the purposes of the strategy (e.g. that it must be consistent with any national housing strategy or an authority’s community strategy) and the review of the strategy (e.g. that the strategy must be reviewed after a certain period of time).

225. In practice the requirements which the Secretary of State and National Assembly for Wales propose to impose under section 87(1) are unlikely to differ from what authorities are asked to do on a non-statutory basis for their local housing

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strategies at present. If authorities have already formulated the relevant policies and strategies (albeit that they were not compelled to do so by an explicit statutory provision) then section 87(1) will not have the effect of imposing any further burdens on the authorities.

226. Section 87(2)(a) will allow the appropriate person to require the authority to set out the strategy which it has formulated in accordance with section 87(1), and submit it to him at such time as he may specify. Section 87(3) allows the appropriate person to impose requirements with respect to the contents and form of this and its supply by the authority to the appropriate person in accordance with subsection (2).

227. Section 88 makes it clear that the appropriate person can, in imposing requirements as to the contents of any document prepared for the purposes of section 87, require the inclusion of material relating to property in the authority's Housing Revenue Account, designated as the authority's Housing Revenue Account business plan. This would set out how the authority manages its housing stock and performs its role as a landlord. If an authority in England is required to submit to the Secretary of State (in practice the relevant Government Regional Office), a document whose contents include the Housing Revenue Account business plan, the plan (although not necessarily any other material in the statement) may be taken into account in calculating HRA subsidy in accordance with section 89.

228. Different requirements as to the formulation of local housing strategies, and the preparation and submission of documents evidencing them, may be imposed on different authorities. Differing requirements as to how often an authority may be required to revise its strategy, or submit a document evidencing it to the appropriate person may be imposed, depending on an assessment of the authority's performance. Authorities which no longer keep a Housing Revenue Account (e.g. if they have disposed of all their housing stock) will not be required to prepare a Housing Revenue Account business plan.

229. Unless the power under subsection (3) of section 87 is exercised so as to require authorities to include no more material in the statement than the strategy formulated under subsection (1), authorities will be free to incorporate other material in the same document, in addition to any material they are required to include under section 87. The decision as to what if any additional material to include will be for authorities to take depending on their individual circumstances. If local housing authorities decide to include additional material evidencing plans, strategies or policies which they are statutorily required to have, parts of the statement would then have to be updated as and when those other strategies, plans or policies were required to be reviewed or updated.

230. The types of plans, policies and strategies which it is anticipated that authorities may wish to incorporate in a single document, along with the local housing strategy required under section 87(1), include the Homelessness Strategy prepared under the Homelessness Act 2002, and the reports on home energy conservation

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measures prepared under the Home Energy Conservation Act 1995.

231. The Secretary of State in addition to imposing formal requirements pursuant to sections 87 and 88, proposes to issue guidance to local housing authorities. The National Assembly for Wales guidance issued in June 2002 has conveyed this advice to local authorities in Wales. The guidance will assist authorities to understand how they may comply with the formal requirements imposed as to the preparation of housing strategies and the documents evidencing those strategies, and as to how they might incorporate other material into documents prepared for the purposes of section 87(2). The guidance may be issued in a single document along with the formal requirements themselves.

Schedule 7: Minor and consequential amendments: paragraph 81

232. Paragraph 81 of Schedule 7 amends the Homelessness Act 2002. It clarifies that the requirement to publish certain material produced under that Act applies to the original homelessness strategy prepared under section 1 of the Act, as well as revisions to that material prepared under section 3. It makes clear that the duty to publish only relates to the material prepared under that Act (and not to the whole of any document containing such material). This amendment means that if a local authority decided to meet the requirements of the Homelessness Act 2002 by including its homelessness strategy prepared under that Act in the same document as a housing strategy it is required to have under section 87, there is no obligation to publish the whole of that document. In practice the local authority may find it desirable to publish the entire document on housing related matters.

Section 89: Housing Revenue Account subsidy: payment and calculation

233. Under the Act, rent rebates will be removed from the Housing Revenue Account (HRA) from April 2004 and will be met by rent rebate subsidy payable under the Social Security Administration Act 1992 (see the amendments made to that Act by Schedule 7 to the Act). This section amends sections 79 and 80 of the Local Government and Housing Act 1989 (“the 1989 Act”), in relation to the continued calculation and payment of HRA subsidy in respect of the remaining costs falling on the HRA.

234. The section substitutes a new section 79(2) of the 1989 Act. The new subsection confirms that payment of HRA subsidy may be made subject to conditions, including conditions as to the supply of HRA business plans (see section 88), determined by the Secretary of State or the National Assembly for Wales. The new section 79(2) refers to the “appropriate person”. For England this is the Secretary of State and for Wales this is the National Assembly for Wales. See the amendment made by subsection (6) of the section.

235. The section amends section 80 of the 1989 Act so that HRA subsidy may be calculated in such manner as the Secretary of State or the Assembly may determine rather than in accordance with formulae. Such a determination may, among other things, provide that all or part of the amount is to be calculated in accordance with

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formulae, or that any part which is not so calculated may be calculated by reference, for example, to an assessment of the authority's HRA business plan, the authority's discharge of its housing functions or such other matters as the Secretary of State or the Assembly may determine. This will provide greater flexibility in calculating the amount of HRA subsidy payable to authorities. It for example, allows the Secretary of State and the Assembly to target additional subsidy to authorities which provide better services to their tenants, perhaps by establishing arm's length housing management organisations

236. The amendments in section 80 of the 1989 Act also provide that calculations may be made on the basis of information received on or before such date as the Secretary of State/the Assembly may specify, and on the basis of assumptions. This ensures that there can be certainty about the amounts of subsidy for a year, and that any delay by authorities in supplying the required information need not delay the subsidy calculations, which could affect authorities' budget setting processes.

Section 90: Housing Revenue Account subsidy: negative amounts

237. This section inserts a new section 80ZA into the Local Government and Housing Act 1989 ("the 1989 Act").

238. The new section 80ZA provides that where the calculation of HRA subsidy under sections 79 and 80 of the 1989 Act (as amended by section 89) results in an overall negative amount, the authority concerned shall

- pay that amount to the Secretary of State or the Assembly; and
- charge the costs of doing so to its HRA. The costs will fall to be met from rental and other income in the HRA.

239. This ensures that authorities which are able to generate surplus rental income, even though incurring management and maintenance etc expenditure comparable with other authorities, make a contribution towards meeting the costs incurred by authorities which cannot generate sufficient rent income to meet such costs.

240. This is effectively what happened under the HRA subsidy arrangements for financial years up to and including 2003-04, whereby the surplus was set off against that part of subsidy attributable to rent rebates. But those arrangements are not consistent with the new financial framework for local authority housing (including resource accounting), and have not been well understood. That is why rent rebates are being removed from the HRA from 1st April 2004. Following that the previous redistributive mechanism will no longer be available.

241. There is provision as to the timing and manner of such payments (including provision for payment by instalments), and for the Secretary of State and the Assembly to charge interest where any payments are made late, and to charge for any other costs associated with pursuing latepayments. The amendment made by this

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section to section 141(8) of the Local Government Finance Act 1988 means that any amounts payable by an authority (including interest and other costs) may, in accordance with regulations, be set off by the Secretary of State or the Assembly against specified amounts payable by him/the Assembly to the authority concerned e.g. by way of revenue support grant.

242. Section 80(2) of the 1989 Act is repealed by subsection (2) of this section. For financial years up to and including 2003-04 section 80(2) provided that, where an authority's HRA subsidy calculation was a negative amount, an equivalent positive amount was to be transferred from their HRA to some other revenue account of the authority, other than the Housing Repairs Account. The effect of this was that housing resources (e.g. rents) were used to meet non-housing expenditure for some authorities in England.

Section 91: Housing Revenue Accounts etc: adaptation of enactments

243. This section inserts a new section 87A into the Local Government and Housing Act 1989 ("the 1989 Act).

244. The new section 87A allows the Secretary of State and the National Assembly for Wales, by order, to amend, repeal or re-enact sections 74 to 76 and 78 of and Schedule 4 to the 1989 Act, and make such consequential etc provisions as may be necessary. Any order made by the Secretary of State for England is subject to affirmative resolution of each House of Parliament.

245. The new section provides a mechanism whereby, subject in England to Parliament's approval, changes to the HRA may be made as and when required to reflect new circumstances or to improve the financial arrangements for local authority housing. The new section is an extended version of the previous power which enabled Schedule 4 to the 1989 Act (which was introduced by Part 6 of that Act) to be amended by order subject only to negative procedure.

Section 92: Local housing authority houses: rents

246. Subsection (1) of this section limits the effect of section 24(3) of the Housing Act 1985 so that it applies only in relation to Wales (instead of in relation to both England and Wales). Section 24(3) requires authorities, when setting their rents, to have regard to the principle that rents of houses of any class or description should bear broadly the same proportion to private sector rents as the rents of houses of any other class or description. In certain circumstances, the requirements of section 24(3) might have made it difficult for authorities to comply in the longer term with the Government's rent restructuring policy in England.

247. Subsection (2) of the section allows the National Assembly for Wales to make an order at some time in the future repealing section 24(3) as, after the amendment made by subsection (1) of the section, section 24(3) only applies in relation to Wales. Section 123(1) would allow the Assembly to include in such an order the

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consequential repeal of section 24(4) of the Housing Act 1985.

Schedule 7: Minor and consequential amendments

Paragraphs 31, 33 to 39 and 60

248. Paragraph 31 of Schedule 7: This paragraph is intended as a transitional provision, to provide flexibility in deciding how to recover any overpaid HRA subsidy paid for rent rebates. It amends section 80A of the Local Government and Housing Act 1989 ('the 1989 Act'), so that amounts of HRA subsidy overpaid (by the First Secretary of State or National Assembly for Wales) in respect of rent rebates granted to tenants of houses within an authority's Housing Revenue Account ('HRA rent rebates') may be recovered by withholding or reducing rent rebate subsidy payable (by the Secretary of State for Work and Pensions) under section 140A(2) of the Social Security Administration Act 1992. This paragraph enables the Secretary of State for Work and Pensions to recover overpaid subsidy for HRA rent rebates from authorities, even where the original subsidy was paid as part of HRA subsidy. This will be in addition to the powers of the First Secretary of State and Assembly to recover overpaid HRA subsidy in respect of HRA rent rebates by withholding HRA subsidy payable in future in respect of e.g. management and maintenance.

249. Paragraph 33 of Schedule 7: This paragraph amends Schedule 4 to the Local Government and Housing Act 1989 ("the 1989 Act") which makes provision for the keeping of the Housing Revenue Account. Schedule 4 to the 1989 Act sets out the items to be debited and credited to that account.

250. Sub-paragraph (4) means that the amount of rent rebates granted for the year to tenants of property in the HRA will no longer be debited to that account. Sub-paragraph (2), read with the repeal of section 140D(2) of the Social Security Administration Act 1992 (in paragraph 38 of Schedule 7), means that the authority will no longer transfer an amount to the HRA from another of its accounts where it has exercised its discretion under section 134(8) of the Social Security Administration Act 1992 to grant a higher rent rebate than would otherwise be granted (e.g. by disregarding war disablement or war widows' pensions in calculating an individual's benefit entitlement).

251. Sub-paragraph (5) inserts a new debit item 10, *Sums directed by the Secretary of State or the National Assembly for Wales*. This authorises the giving of directions requiring an authority to carry a specified amount, or an amount calculated in accordance with a prescribed formula, from its Housing Revenue Account to another revenue account (other than its Housing Repairs Account). While the 1989 Act currently provides a power to direct an authority to transfer a sum to its HRA from another revenue account (Item 10 of Part 1 of Schedule 4), there is no direct equivalent authorising directions requiring transfers from the HRA. A separate direction-making power will remove the need to use determinations under Item 8 of Part 2 of Schedule 4 to effect such transfers, which would further complicate what is

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already a complex determination.

252. The power to direct the transfer of sums from the HRA to another account may be used where an authority has chosen to increase the rents of dwellings in the HRA above the level at which rent rebate subsidy may be paid in respect of property in the HRA under the Social Security Administration Act 1992. HRA subsidy currently paid by the National Assembly for Wales and the First Secretary of State in respect of rent rebates for tenants of dwellings is subject to a “rent rebate subsidy limitation” policy. This means that where an authority increases its rents above a certain level, it must meet additional benefit costs itself, rather than receiving subsidy for them. It is proposed that rent rebate subsidy limitation will continue to apply when HRA tenants’ rent rebates are subsidised by rent rebate subsidy paid under the SSAA 1992 instead of as before through HRA subsidy. Rent rebate subsidy limitation will operate from April 2004 by including provision for a deduction, from the amount of subsidy which would otherwise be paid, in the order under section 140B of the SSAA 1992 setting out how rent rebate subsidy is calculated.

253. If the authority chooses to set its rents above the limit rent set out in the policy of rent rebate subsidy limitation, then it is considered appropriate that the costs that will not be subsidised should be met by the authority out of its HRA, rather than out of some other account. The extent to which these rebates are unsubsidised would be a consequence of a decision by the authority in its landlord role, and therefore the associated costs should be met by its landlord account, that is, its HRA. A direction under the new debit item 10 inserted by sub-paragraph (5) would allow an appropriate transfer of resources from the HRA to another revenue account in the authority’s general fund (or council fund in Wales) to which rent rebates would be debited.

254. Sub-paragraph (3) substitutes a new item 9 for the current Item 9 of Part 1 of Schedule 4 (credits) to allow for amounts under the new Item to be calculated in accordance with formulae. This brings that Item in line with the new Item 10 of Part 2 of that Schedule (debits), which it mirrors.

255. Paragraphs 34 to 39 of Schedule 7: These paragraphs make minor and consequential amendments to the Social Security Administration Act 1992 (“the SSAA 1992”).

256. Paragraph 35 of Schedule 7 corrects the reference in section 134(2) of the SSAA 1992 to the subsections in that section which prescribe when housing benefit takes the form of a rent rebate and when it takes the form of a rent allowance. This amendment is deemed to have come into force on 1st April 1997 when the amendment to section 134 under the Housing Act 1996, which inserted new subsections referring to rent rebates and allowances, took effect.

257. Paragraph 36(a) repeals the second sentence of section 140B(2) of that Act (exclusion of “Housing Revenue Account rebates” paid by housing authorities in England and Wales from the amount of relevant benefit). Paragraph 39 deletes the

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definition of “Housing Revenue Account rebate” from section 140G of the SSAA 1992 since there will no longer be any such rebates debited to the HRA. The repeal of the second sentence in section 140B(2) and the definition of Housing Revenue Account rebates will ensure that in calculating rent rebate subsidy, the Secretary of State is not prevented from taking into account any rent rebates which had been debited to the HRA in earlier years, e.g. where such rebates had been overpaid, and a deduction needs to be made in respect of the overpayment.

258. Paragraph 36(b) of Schedule 7 repeals subsection (7) of section 140B of the SSAA 1992. The powers under the other provisions of section 140B to calculate the amount of rent rebate subsidy, rent allowance subsidy and council tax benefit subsidy payable, and in particular to pay additional amounts or deduct amounts from the subsidy which would otherwise be payable, are broad. The Secretary of State may determine such additions and deductions by reference to such matters as he thinks fit, including, for example, the amount of relevant benefit paid by the authority during a previous year, or the rents of dwellings in the HRA (for the purposes of a deduction for rent rebate subsidy limitation in respect of rent rebate subsidy payable for rent rebates to tenants of HRA dwellings). Subsection (7) did not confer any additional power on the Secretary of State, and made the true extent of the Secretary of State's powers unclear.

259. Paragraph 37 of Schedule 7 inserts a new subsection (1A) into section 140C of the SSAA 1992. Section 140C(1) of the SSAA 1992 allows the Secretary of State to impose conditions, subject to which subsidy will be paid, in respect of claims, records, certificates, audit or otherwise. Conditions can be imposed under section 140C(1) requiring authorities to provide the Secretary of State with information. Where such conditions are imposed, the new subsection (1A) expands the kind of information that can be required. This will enable the Secretary of State to require the authority to provide information necessary for the Secretary of State to carry out *any* of his functions relating to subsidy. These functions include making an order setting out how subsidy will be calculated (including any rent rebate subsidy limitation deduction), as well as calculating the amount of subsidy payable under an order.

260. Conditions imposed under subsections (1) and (1A) of section 140C of the SSAA 1992 could require authorities to provide information to the First Secretary of State or to the National Assembly for Wales, as well as to the Secretary of State for Work and Pensions. The First Secretary of State in England and the National Assembly in Wales could continue to collect information as part of monitoring the policy of rent rebate subsidy limitation. They could then pass the information on to the Secretary of State for Work and Pensions along with representations as to the form of rent rebate subsidy limitation formulae. This would be possible as an alternative to requiring authorities to send that information directly to the Secretary of State for Work and Pensions. Information which authorities may be required to supply under this section could include the level of rents set by an authority for any year, the amount of rent rebates granted to tenants of property within the HRA, or information

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relating to rent restructuring for an authority in England.

261. Paragraph 60 of Schedule 7 makes a consequential amendment to section 122(4) of the Housing Act 1996, as a result of amendments made by the Social Security Administration (Fraud) Act 1997 to section 140B of the Social Security Administration Act 1992. The amendments made in 1997 resulted in provisions in section 140B being shuffled between its subsections. As a result section 122(4) no longer refers correctly to the subsections of section 140B. The amendments made by paragraph 60 of Schedule 7 mean that readers do not have to rely on section 17(2)(a) of the Interpretation Act 1978 to interpret section 122(4) because section 122(4) will now refer correctly to the subsections of section 140B under which the Secretary of State may include provision in an order for additions to or deductions from subsidy, or deduct subsidy which he considers it would be unreasonable to pay. Paragraph 60 is deemed to have come into force on 1st July 1997 when the amendments to section 140B of the Social Security Administration Act 1992 made by the Social Security Administration (Fraud) Act 1997 came into force.

262. The amendment in paragraph 38 of Schedule 7 omitting section 140D(2) needs to be read with the repeal of item 5 of Part 1 of Schedule 4 to the Local Government and Housing Act 1989 (see paragraph 33(2) of Schedule 7 to the Act).

263. The SSAA 1992 extends to (i.e. forms part of the law of) Scotland. The effect of section 129 of the Act is that the amendments will have effect in relation to the SSAA 1992 as operating throughout England, Wales, and Scotland. This means that all the amendments to the SSAA 1992 will also form part of the law of Scotland. It should be noted that sections 140A to 140G of the SSAA 1992 are not devolved matters in Scotland (see paragraph 1(2)(e) of Schedule 4 to the Scotland Act 1998).

PART 8: MISCELLANEOUS AND GENERAL

Sections 93 to 98: Charging and Trading

Introduction

264. The sections provide a new power for best value authorities to charge for discretionary services and enable new trading powers to be conferred on such authorities.

Section 93: Power to charge for discretionary services

265. This provides power for best value authorities, as defined in the Local Government Act 1999, to charge for discretionary services. Discretionary services are those services that an authority has the power but not a duty to provide. An authority may charge where the person who receives the service has agreed to its provision. The power to charge under this provision does not apply where the power to provide the service in question already benefits from a charging power (93(2)(a)) or is subject to

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an express prohibition from charging (93(2)(b)).

266. Section 93(3) and (4) place a duty on best value authorities to ensure that, taking one year with another, the income from charges for each kind of discretionary service does not exceed the costs of provision.

267. Section 93(5) provides that, within the framework set by section 93(3) and (4), a best value authority may set the charges as it thinks fit, and may in particular charge only certain people for a service or charge different people different amounts.

268. In carrying out their functions under section 93, best value authorities are required to have regard to any guidance that may be issued (93(6)) by the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.

269. Section 93(7) provides that certain prohibitions in other legislation preventing authorities from raising money are specifically disapplied in relation to the exercise of the charging power.

Section 94: Power to disapply section 93(1)

270. This section allows the Secretary of State, or (in relation to authorities in Wales) the National Assembly for Wales, to make orders disapplying the power to charge in section 93(1) in relation to particular authorities or descriptions of authority or particular services. Disapplication may be indefinite or for a particular period.

Sections 95 and 96: Power to trade in function-related activities through a company; Regulation of trading powers

271. Section 95(1) provides power for the Secretary of State, or (in relation to authorities in Wales) the National Assembly for Wales, to make an order enabling best value authorities (with the exception of those listed in subsection (7)) to trade in any of their ordinary functions. An order authorising trading may make provision about the persons with whom authorities may trade.

272. The power may not be used to authorise best value authorities to trade in a statutory service which they are already obliged to provide with a person to whom they are already obliged to provide it, or to use the new powers where there are existing trading powers.

273. Orders made under the power may relate to all best value authorities or to particular best value authorities or descriptions of best value authority. They may also relate to all activity in relation to a function, particular activities, or descriptions of activity. This will enable the scope of the trading powers to be related to an authority's performance categorisation under the Comprehensive Performance Assessment regime, where appropriate (sections 99(4) and 100(1) and (2)(e)).

274. The power to trade conferred by these provisions is only exercisable through a company within the meaning of Part 5 of the Local Government and Housing Act

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1989 (“the 1989 Act”) (companies in which local authorities have interests). Part 5 of that Act shall for the purpose of these provisions be deemed to apply to a best value authority which is not otherwise a local authority. Furthermore, that application of Part 5 is restricted to companies through which a best value authority operates the power under section 95(1) and limited to trading activities undertaken by such companies.

275. Section 96 provides an order-making power to impose conditions on the exercise of any trading power by a best value authority, including where this is undertaken through a company. Best value authorities are required to have regard to any guidance that may be issued about the exercise of their trading powers.

Section 97: Power to modify enactments in connection with charging or trading

276. This section confers powers enabling the Secretary of State to modify or exclude the application of any enactment, except sections 93(2) and 95(2) of this Act, that restricts a best value authority's ability to charge for the provision of a discretionary service or carry out trading in its functions. The section also permits the Secretary of State to modify or exclude the application of any enactment that confers power on a best value authority to charge for a discretionary service. The effect of excluding such a power will be to substitute for the specific provision in question the general power to charge under section 93.

277. An order made under this provision may apply differentially to different authorities and different functions. It may not be used to authorise best value authorities to trade in a statutory service that they are already obliged to provide with a person to whom they are already obliged to provide it.

278. Orders made under this provision would be subject to the affirmative resolution procedure in both Houses of Parliament.

279. The section also makes provision about the Parliamentary procedure applicable to orders that amend earlier orders just for the purpose of causing them to apply, or not apply, in relation to particular authorities or authorities of a particular description. Orders amending earlier orders in this manner are to be subject to the negative resolution procedure in both Houses of Parliament.

280. The powers under this section will not be exercisable by the National Assembly for Wales (NAW). But the Secretary of State may not make any provision which has effect in Wales without consulting the NAW and may not make provision in relation to legislation made by the NAW without the consent of the NAW.

281. The NAW may submit its own proposals to the Secretary of State to the effect that any order made under these powers with provisions affecting Wales, should be in accordance with those proposals.

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Section 98: Procedure for orders under section 97

282. The section describes further the affirmative resolution procedure the Secretary of State is to follow in making an order under section 97. He is required to consult such best value authorities or persons as appear to him to be representative of interests affected by his proposals and to lay before each House of Parliament for 60 days a document explaining his proposals, together with a draft order and details of the consultations that have been conducted including those with the NAW where the proposals relate to best value authorities in Wales. Thereafter, in preparing a draft order, the Secretary of State is required to consider any representations made during the 60 day period during which his proposals have been before the Houses of Parliament. The draft order laid before Parliament for approval must be accompanied by a statement by the Secretary of State, with details of the representations that he has considered and any changes made to his proposals.

Sections 99 and 100: Performance Categories

Section 99: Categorisation of English local authorities by reference to performance

283. Section 99 requires the Audit Commission to produce reports on its assessment of English local authorities' performance, including placing authorities into one of a number of categories by reference to assessed performance. The Secretary of State may then make an order establishing the categorisation and identifying the authorities placed in each category. The Secretary of State has no power to place an authority in a category different to that in which it has been placed by the Audit Commission.

Section 100: Exercise of powers by reference to authorities' performance categories

284. Section 100 covers the exercise of various powers that allow the Secretary of State to remove regulatory controls on authorities or to grant additional powers to them. In particular, subsection (1) makes it clear that the powers mentioned in subsection (2) may be exercised for the purpose of making provision that relates to authorities that are for the time being in a particular performance category under section 99. Where provision of that kind is made and an authority undergoes recategorisation, the result will be that the provision relating to the authority's old category will no longer apply to it and, instead, the authority will be subject to the provision that applies to its new category.

285. The powers mentioned in subsection (2) include the power to modify legislation that prevents or obstructs compliance with Best Value or the promotion of well being and the power to remove requirements to produce plans or strategies. They also include powers to specify: performance indicators and standards; frequency and content of Best Value reviews and performance plans; and non-commercial considerations for local authorities entering into contracts.

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286. Schedule 3 (introduced by subsection (3)) amends some of the provisions conferring the powers identified above. The amendments seek to ensure that the powers can be exercised flexibly and not only allow provision to be made for authorities in different performance categories but also for particular named authorities, which (for example) may be necessary for the purposes of giving effect to Local Public Service Agreements.

287. Subsections (4) to (7) provide that additional powers may subsequently be added to the list in subsection (2) by order, which will require the approval of both Houses of Parliament. Where any such additional power is not already capable of being exercised in relation to some English local authorities only or differently in relation to different authorities, an order under subsection (5) can amend the legislation conferring the power to allow it to be used in those ways. This procedure will also require the approval of both Houses of Parliament.

Sections 101 and 102: Contracting-out: staff transfer matters, including pensions

288. The sections confer new powers on the Secretary of State, the National Assembly for Wales and Scottish Ministers to require best value authorities in England, Wales or Scotland, when engaged in contracting-out exercises, to deal with staff matters in accordance with directions. Section 101 also requires authorities to have regard to guidance on staff matters issued by the Secretary of State, the National Assembly for Wales or Scottish Ministers. The background to this is the commitment made, as part of a package of workforce measures, following the review of Best Value, to legislate to make statutory within local government the provisions in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and the Annex to it, A Fair Deal for Staff Pensions (this is available on the Cabinet Office website at: www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf). It is intended to use the direction making powers to ensure that contracting exercises are conducted either on the basis that TUPE will apply or, in circumstances where TUPE does not apply, that staff involved should be treated no less favourably than had the Regulations applied, unless there are exceptional circumstances, and that transferees will be offered either retention of the Local Government Pension Scheme (LGPS) or a broadly comparable scheme.

Section 101: Staff transfer matters: general

289. This allows for the Secretary of State, or (in relation to authorities in Wales other than police and fire authorities) the National Assembly for Wales, or (in relation to relevant authorities in Scotland) the Scottish Ministers, to issue directions to require best value authorities, in contracting with other persons for the provision of services or in circumstances where a contracted-out service is brought back into the public sector on the termination of a contract, to deal with staff transfer matters (employment or pensions) in accordance with any directions made. The section also requires authorities to have regard to guidance on staff matters issued by the Secretary of State, the National Assembly for Wales or Scottish Ministers.

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290. The duty of best value as set out in the *Local Government Act 1999* or the *Local Government in Scotland Act 2003* is subordinate to this requirement. Directions or guidance made under the power may relate to all best value authorities or to particular descriptions of best value authority.

Section 102: Staff transfer matters: pensions

291. This provides that the Secretary of State, National Assembly for Wales and Scottish Ministers shall exercise their powers under section 101 to give directions so as to ensure that English, Welsh and Scottish local authorities, in contracting for the provision of services, secure specified pension benefits. These are, first, that the contractor is required to secure pension protection for employees of an authority who are transferring from the authority under TUPE or who, in a re-contracting case, transferred from the authority under TUPE when the services were first contracted out, have transferred under TUPE on each subsequent change in contractor and are again transferring under TUPE in connection with the contract with the contractor. Secondly, that the contractual terms for the securing of pension protection for a transferring employee are enforceable by the employee. Pension protection is secured where the employee's rights to acquire pension benefits are the same as, or broadly comparable to, those enjoyed by the employee before the transfer.

Sections 103 and 104: 2004 Local Government Elections

Section 103: Power to change date of local elections in England

292. This section permits the Secretary of State to move, by order, the dates of local elections (for principal councils and parish councils) and Greater London Authority (GLA) elections in 2004 so that they are held on the same day as the European Parliamentary general election due in 2004. Ordinary local and GLA elections (i.e. elections other than by-elections) would normally be held on the first Thursday in May (6th May in 2004), whilst in 2004 the European Parliamentary elections have to be held in the period 10th to 13th June. Subsection (1)(a) enables the Secretary of State to leave ordinary parish council elections to take place on 6th May, or to move with them to June with the GLA and other ordinary local elections.

293. A by-election generally has to take place within a specified period after a vacancy occurs. In the event that local elections are moved to June, subsection (2)(a) would (for example) allow the Secretary of State's order to provide that by-elections should not take place during the period from 6th May 2004 until the June election date.

294. Section 16(1) of the Representation of the People Act 1985 provides that where parish council, principal council and European Parliamentary elections would otherwise all take place on the same day, the parish council elections are to be postponed for 3 weeks. Subsection (2)(b) would allow the Secretary of State's order to override that provision with the result that all of the elections could take place on the same day in June.

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295. Local authorities, joint authorities and police authorities are required to hold annual meetings. In a year where a local authority has an ordinary election, the date of the meeting is linked to, but follows, the date of the election. In other years, and in every year for a police authority, the period within which its annual meeting has to be held allows for by-elections, or elections of its locally elected members, to take place on the first Thursday in May. Subsections (2)(c) and (3) will allow the Secretary of State's order to cater for those meetings being moved to after the June elections in areas where ordinary elections are not held in 2004 but by-elections might be.

296. Some statutory provisions assume that there will be a single ordinary date of election for councillors throughout England and Wales. Subsection (4) enables the Secretary of State to make an order providing, for example, for the sensible working in England of such provisions in the event of the National Assembly for Wales making an order under section 104 moving some or all of the Welsh local elections in 2004 from May to June.

297. Paragraph 7 of Schedule 7 to the Act extends the power under section 15(5) of the Representation of the People Act 1985 so that, in the event of local and GLA elections being moved in 2004, regulations about combining those elections with the European Parliamentary general elections in that year will be able to modify any of the legislation governing any of the combined elections. The references to Gibraltar (both in paragraph 7 of Schedule 7 and in section 129(4)) allow for the European Parliament (Representation) Act 2003 having been enacted. For as a result of that Act, combined 2004 elections will be governed by law which extends not only to each part of the United Kingdom but also to Gibraltar.

Section 104: Power to change date for elections in Wales

298. This section permits the National Assembly for Wales to move, by order, the dates of local elections (either the principal council elections, the community council elections, or both sets of elections) in 2004 so that they are held on the same day as the European Parliamentary general elections due in 2004. Ordinary local elections (i.e. elections other than by-elections) would normally be held on the first Thursday in May (6th May 2004) whilst in 2004 the European Parliamentary elections have to be held in the period 10th to 13th June.

299. A by-election generally has to take place within a specified period after a vacancy occurs. In the event that local elections are moved to June, subsection (2) (a) would (for example) allow the National Assembly for Wales' order to provide that by-elections should not take place during the period from 6th May 2004 until the June election date.

300. Section 16(1) of the Representation of People Act 1985 provides that where community council, principal council and European Parliamentary elections would otherwise all take place on the same day, the community council elections are to be postponed for 3 weeks. Subsection (2) (b) would allow the National Assembly for Wales' order to override that provision with the result that all of the elections could

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take place on the same day in June.

301. Some statutory provisions assume that there will be a single ordinary date of elections for councillors throughout England and Wales. Subsection (3) enables the National Assembly for Wales to make an order providing, for example, for the sensible working in Wales of such provisions in the event of the Secretary of State making an order under section 103 moving some or all of the English local elections in 2004 from May to June.

302. Paragraph 7 of Schedule 7 to the Act extends the power under section 15(5) of the Representation of the People Act 1985 so that, in the event of local elections being moved in 2004, regulations about combining those elections with the European Parliamentary general elections in that year will be able to modify any of the legislation governing any of the combined elections.

Sections 105 and 106 (and Schedules 4 and 5): Valuation Tribunal Service

Introduction

303. Valuation Tribunals (VTs) are independent bodies established under Schedule 11 to the Local Government Finance Act 1988, although they have existed in one form or another since 1948. Their purpose is to hear appeals against rating, council tax valuations and liability. There are 56 Tribunals in England, served by 25 administrative offices, grouped into 14 regional units with around 160 staff.

304. Tribunals are organised broadly on a county or metropolitan area basis. Members are appointed jointly by local authorities and presidents of local VTs. Each VT may appoint a clerk and other employees and maintain a permanent office, although some VTs maintain joint offices and appoint the same clerk and staff. The Office of the Deputy Prime Minister undertakes a range of administrative functions on behalf of the VTs, including accommodation, pay and technical finance matters.

305. A quinquennial Financial Management and Policy Review of the VTs in 1999 recommended that their administration should be brought together in a regional structure and that a management board supported by a small national office should provide central direction. The purpose of this provision is to implement that recommendation.

Section 105: The Valuation Tribunal Service

306. Section 105 establishes a new non-departmental public body, the Valuation Tribunal Service. The Service has power to carry out administrative functions for the VTs in England only, including accommodation, staffing (including clerks), information technology, equipment and training needs. The Service also has power to give general advice about procedure in relation to proceedings before tribunals in England.

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307. The Service is under a general duty in carrying out its functions to do what, in its opinion, is best to secure the efficient and independent operation of VTs in England.

308. The Secretary of State may provide guidance to the Service about the carrying-out of its functions. Following consultation with the Service, he may also provide directions for the purpose of securing the effectiveness of the Service in carrying out its functions. Once issued, the Service will be required to comply with any directions and have due regard to any guidance in carrying out its functions.

309. The Service will be required to consult with the valuation tribunals about the carrying out of its functions to ensure consistency and best practice.

Schedule 4: The Valuation Tribunal Service

310. Schedule 4 makes further provision in relation to the Service.

311. The Secretary of State will appoint between six and ten members to form the Service. At any time, the majority of members of the Service must be presidents or chairmen of the VTs. The rest of the Service need not be presidents or chairmen of VTs but must have suitable qualifications or experience. The Secretary of State will appoint a Chairman and a Deputy.

Disqualification from membership of the Service

312. A person will be disqualified from being appointed to the Service or from remaining a member of the Service if he is an employee of the Service or is married to one, he is subject to a Bankruptcy Restrictions Order in England or Wales, he is an undischarged bankrupt in Northern Ireland or Scotland or he has been convicted of an offence in the last five years and sentenced to imprisonment for three months or more. Bankruptcy restrictions orders will be made under Schedule 4A to the Insolvency Act 1986 (inserted by Schedule 20 to the Enterprise Act 2002). Under section 268 of the Enterprise Act 2002, the Secretary of State may by order amend pre-8th November 2002 legislation that imposes bankruptcy-related disqualifications. Orders under that section may remove disqualifications or extend them to, or replace them with disqualifications of, persons subject to bankruptcy restrictions orders, and may also provide for disqualifications to be applied at a specified person's discretion. Although paragraph 2(1)(c) of Schedule 4 (disqualification of bankrupts in Northern Ireland or Scotland) will not be pre-8th November 2002 legislation, paragraph 25 of Schedule 4 provides for it to be treated as though it were such legislation for the purposes of section 268. So an order under that section will be able to modify paragraph 2(1)(c) should bankruptcy restrictions orders, or a similar regime, be introduced in Northern Ireland or Scotland. An order modifying the identified disqualifications in paragraph 2(1)(c) of Schedule 4 cannot make those disqualifications applicable at the discretion of a specified person and will be subject to the negative resolution procedure.

313. Appointments must not exceed three years but a member may be re-appointed. The member may resign at any time. The chairman or deputy chairman of the Service

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will cease to hold that office if he ceases to be a member of the Service. A member of the Service who falls foul of one of the prescribed disqualification events will automatically cease to be a member. A member of the Service who was appointed by the Secretary of State as one of the majority of members who was a president or chairman of a VT will cease to be member of the Service if he ceases to be a president or chairman of a VT. Furthermore, where a member fails to attend Service meetings without reasonable excuse over a continuous period of three months, his appointment will cease.

314. The Secretary of State may also terminate a member's appointment where he is unfit or unable to carry out his functions.

315. The Secretary of State will have the power to re-appoint a person a member of the Service, provided he did not cease to be a member because he was disqualified by reason of conflict of interest, or in connection with his bankruptcy, he was convicted of an offence and received a sentence of imprisonment of three months or more, or he was absent from meetings for the prescribed period.

316. The Secretary of State will determine how much remuneration members should receive from the Service. The Service has power, if so required by the Secretary of State, to pay pensions to members and former members, or to establish pension schemes for such people. The Service, if so required by the Secretary of State, will make compensation payments to a member leaving the Service.

Staff of the Service

317. The Service will have a Chief Executive. The first Chief Executive will be appointed by the Secretary of State in consultation with the chairman or chairman designate of the Service. Future Chief Executive appointments will be made by the Service subject to consent from the Secretary of State.

318. The Service can appoint such other staff and pay remuneration and allowances to its staff, as it thinks appropriate. The Service will determine how much remuneration such staff should receive, subject to the Secretary of State's consent.

319. The Service can set up a pension scheme and pay pensions for the staff of the Service. However, VT employees (for example, clerks to VTs) are eligible to join the Local Government Pension Scheme. It is envisaged that Service employees (including the Chief Executive) will also be eligible to join this scheme.

320. Currently all staff are locally employed by the valuation tribunal they work for. The new body will become the employer of all staff. Where the Service proposes to appoint a clerk for a VT, it must obtain the consent of the VT before it may do so.

Committees of the Service

321. The Service has the general power to delegate performance of its functions to committees and its employees, by specific written authorisation. Committees will be

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able to delegate their functions to their sub-committees and Service employees, and sub-committees will be able to delegate their functions to Service employees. Non-Service members will be allowed to sit on committees so that specialist expertise may be utilised in appropriate cases. The Service may pay such remuneration and allowances as the Secretary of State may determine, to members of committees and sub-committees who are neither members nor employees of the Service.

Interests of members of the Service

322. A member who has an interest in any matter that is brought up for consideration at a meeting of the Service, committee or sub-committee must disclose his interest to the meeting. His interest will be minuted and that member shall not take part in the deliberation or decision regarding that matter. The member can give a general notification that he has an interest in a company, firm or other organisation. If he takes reasonable steps to ensure that his interest is notified in a notice which is read and considered at the meeting, he does not need to attend the meeting in person. The Secretary of State has power to allow the member to take part in considering matters in which the member has an interest subject to such conditions as he considers appropriate.

The Service's finances

323. The Secretary of State may pay grants and loans as he thinks fit to cover the expenses incurred by the Service in performance of its duties. However, the Service will not be able to borrow money from any other source without the consent of the Secretary of State.

324. The Service will be subject to the normal provisions applying to public bodies in relation to the keeping of proper accounts, the role of the Comptroller and Auditor General, and the presentation to Parliament of reports at the end of the financial year.

Section 106 and Schedule 5: Transfer to Service of property, rights and liabilities

325. As a result of the establishment of the Service, there will be a need to make a formal transfer of property, rights and liabilities from its sponsoring Department (who currently own many of the assets used by the administration offices which support the Valuation Tribunals), and from individual valuation tribunals, to the Valuation Tribunal Service. This means that all tribunal offices and associated assets and the associated contractual liabilities arising from them will need to be formally transferred via a transfer scheme or schemes. It is envisaged that this will take place on the day the provisions establishing the Service comes into force. More detail about transfer schemes is given by Schedule 5.

Sections 107 to 111: Audit Commission

Sections 107 and 108: Auditors' public interest reports

326. These sections make amendments to the Audit Commission Act 1998 regarding the publication, and handling by local authorities, of public interest reports prepared by appointed auditors. They provide for the auditor to have direct

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responsibility for publishing reports and making copies available more widely than just to the authority concerned. They also reduce the time authorities have to respond to these reports to ensure that the matters to which such reports refer are considered promptly by authorities.

Section 107: Auditors' public interest reports: time allowed for consideration

327. This section amends the Audit Commission Act 1998 and reduces from four months to one month the time limit within which local authorities must consider, in a meeting open to the public, the contents of public interest reports prepared under section 8 of that Act by appointed auditors. The existing provision whereby an auditor may allow longer for consideration of such reports is to be retained.

Section 108: Auditors' public interest reports: publicity

328. An auditor may, under section 8 of the Audit Commission Act 1998, make a report in the public interest on any matters coming to his notice during an audit which he considers should be brought to the attention of the public. A report may be made at the conclusion of an audit, or where the auditor considers it appropriate the matter may be made the subject of an immediate report. The auditor must give a copy of the report to the audited body forthwith if it is an immediate report, or otherwise within 14 days of the conclusion of the audit. Where an audited body receives an immediate report any member of the public may inspect the report, make copies or require the body to supply a copy of the report, or any part of it, on payment of a reasonable fee. The auditor may also notify any person that he has made a report and supply a copy or any part of it to any person he thinks fit.

329. This section amends the Audit Commission Act 1998 to provide that auditors should assume responsibility for publishing all public interest reports, notifying persons they think fit that such reports have been published and supplying copies to members of the public on request. From the time a report is sent to an audited body, auditors should ensure that members of the public may inspect reports and have copies made available. The obligation on auditors to provide copies will last for one year, thereafter it will fall to the Audit Commission.

Section 109: Registered social landlords

330. This section confers on the Audit Commission powers to inspect housing services provided by registered social landlords (RSLs). Inspection of RSLs' housing services in England is currently undertaken by the Housing Corporation as part of its regulatory role. In future, a single housing inspectorate within the Audit Commission will be able to inspect all social housing landlords in England whether local authorities or RSLs. Such a single inspectorate would be able to ensure that local authorities and RSLs provide the same standards of service for all tenants of social housing, drawing on the expertise that the Audit Commission has built up. The powers conferred on the Commission also apply to RSLs registered with the National Assembly for Wales: inspection of those RSLs is currently undertaken by the Assembly.

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331. Subsection (1) will be commenced in relation to RSLs registered with the Housing Corporation by commencement order made by the Secretary of State and, in relation to RSLs registered with the National Assembly for Wales, by commencement order made by the Assembly.

332. Subsection (1) adds two new sections to the Audit Commission Act 1998. The new section 41A defines what may be inspected in RSLs, gives the Audit Commission powers to publish reports and powers of access to premises and information, and requires it to consult the Housing Corporation (or, in Wales, the National Assembly) on its programmes of inspection. The new section 41B makes provision for the Commission to charge RSLs for inspection. The Secretary of State (or, in relation to RSLs registered with the National Assembly for Wales, the Assembly) may make an order authorising the Commission to charge fees, but only after consultation. If so authorised, the Commission would have to consult on the level of fees. The amendment made by subsection (3) of the section requires the Commission to balance its income and expenditure on RSL inspection over time. The amendment made by subsection (4) of the section authorises the Secretary of State and Assembly to pay grant to the Commission.

Section 110: Financial Year

333. At present the Audit Commission's financial year, determined by paragraph 11(5) of Schedule 1 to the Audit Commission Act 1998, runs from 1 November to 31 October. Section 110 amends paragraph 11(5) so that the Commission's financial year will run from 1 April to 31 March.

334. Paragraph 65 of Schedule 7 to the Act changes certain other dates mentioned in Schedule 1 to the Audit Commission Act 1998. These amendments are consequential on the change to the Commission's financial year.

Section 111: Delegation

335. Section 111 inserts a new paragraph 11A in Schedule 1 to the 1998 Act, which provides that any of the Audit Commission's functions may be delegated to its committees and sub-committees and its officers and servants.

Sections 112 to 122: Other

Section 112: Standards Board for England: delegation

336. This section gives the Standards Board for England the power to delegate any of its functions to:

- an officer or servant of the Board;
- a committee or sub-committee of the Board; or
- an individual member of the Board.

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337. The Standards Board is an independent body responsible for the promotion and maintenance of high standards of conduct by members and co-opted members of relevant authorities in England.

338. The Standards Board was set up and is governed by the Local Government Act 2000. The Board has a number of functions conferred by the Act, one of which is to consider a written allegation and decide whether the allegation should be referred to an ethical standards officer for investigation.

339. There is no provision in the Act which gives the Standards Board the ability to delegate functions. The number of complaints received by the Board and the ability to cope with the demands made by those complaints has led to the view that a power of delegation is required in order to allow Board members to fulfil their proper role of setting strategic guidance and direction.

Section 113 : Standards committees etc

340. This section enables local authority standards committees to appoint sub-committees. It also enables the monitoring officer of an authority to nominate another person to carry out duties when the monitoring officer believes he himself ought not to carry out those duties.

341. The Local Government Act 2000 required each relevant local authority to establish a standards committee. Standards committees have the general functions of promoting high standards of conduct, and of assisting members to observe the authority's code of conduct.

342. The 2000 Act also envisages that standards committees could in certain circumstances consider reports of alleged misconduct by members of the authority and subsequently take actions against members found to have breached the code of conduct. This function of considering reports into misconduct allegations is to be provided for in regulations which the Secretary of State intends to make under section 66 of the 2000 Act. In order that standards committees will be able to regulate the number of members of the committee present when considering such cases, it is necessary to provide for the creation of sub-committees.

343. Regulations under section 66 of the 2000 Act will also provide for the investigation of misconduct allegations to be carried out by the monitoring officer of an authority. The 2000 Act gives this duty to the monitoring officer personally. However, there may be circumstances where it would be improper for the monitoring officer to conduct the investigation – for example if he or she (as the authority's principal legal adviser) has previously given advice to the member concerned on the application of the code. This section will allow the monitoring officer to nominate another person to conduct the investigation. The nominated person could be another employee of the authority, or someone outside – for example the monitoring officer of a neighbouring authority.

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Section 114: Paid time off for Councillors etc not to be political donations

344. Where any salary is paid to an employee by an employer in respect of time off taken in order to undertake duties as a local councillor, this section ensures that the value of the salary is not classified as a political donation under the Political Parties, Elections and Referendums Act 2000 (“PPERA”).

345. Schedule 7 to the PPERA controls donations made to a person in his or her capacity as a councillor in connection with his or her political activities. It was previously considered prior to the passing of the Local Government Act 2003, that where an employee was a councillor, and was allowed paid time off work to carry out council duties, the pay for the time off constituted a controlled donation. This ran counter to the Government’s intention that the provisions of the PPERA should not apply to the receipt by a councillor of paid time off for carrying out his or her duty as a councillor. This section provides that the value of any salary paid to an employee by an employer in respect of time taken off in order to undertake “qualifying business” as a local councillor is not a donation for the purposes of Schedule 7 to the PPERA.

346. “Qualifying business” relates to the business of the authority, whether conducted by the authority itself, its executive (or any committee or member of the executive) or any of its committees or sub-committees. Qualifying business also relates to any duties that a councillor may carry out for:

- other bodies to which the councillor has been appointed or nominated by the council of which the councillor is a member, and
- any public bodies to which the councillor has been appointed , whoever makes the appointment.

347. The time off for which pay does not count as a political donation is time off for a widely defined range of duties, including the doing of anything for carrying out the functions of the council to which a councillor has been elected and the doing of anything for carrying out any functions of another council where that other council has delegated the discharge of those functions to the councillor’s council.

348. The section applies retrospectively, so that any pay for time off which may have been granted to councillors since 16th February 2001, when the requirements of Schedule 7 to the PPERA came into force, is no longer considered a political donation.

349. The section extends (see section 129(5)) to England and Wales, and also to Northern Ireland and Scotland, but only partially in the latter case. For, although the section amends an earlier enactment that extends throughout the United Kingdom, a similar amendment has been made in Scotland by section 42 of the Local Government in Scotland Act 2003, which received Royal Assent on 11 February 2003. However, this Scottish Act is able to amend the earlier enactment only so far as it is part of the law of Scotland that can be amended by the Scottish Parliament. In particular, the Scottish Parliament cannot amend the law of Scotland to confer or remove functions

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exercisable otherwise than in or as regards Scotland. The earlier enactment, though, affects conduct throughout the United Kingdom. The section therefore amends the existing enactment, to the extent that it is part of the law of Scotland, only so far as the Scottish Parliament could not amend it. This means that the earlier enactment is fully amended throughout the United Kingdom.

Section 115: Overview and scrutiny committees: voting rights of co-opted members

350. Section 115 and paragraph 80 of Schedule 7 modify the Local Government Act 2000 so as to provide local authorities in England with a power to grant voting rights to members of overview and scrutiny committees who are not members of the authority. The purpose of the change is to meet a commitment given in the Local Government White Paper of December 2001 (*Strong Local Leadership – Quality Public Services*).

351. Section 115 inserts three paragraphs (paragraphs 12, 13 and 14) into Schedule 1 to the Local Government Act 2000.

352. Paragraph 12 allows a local authority to permit co-opted members of an overview and scrutiny committee, being members of the committee who are not members of the authority, to vote at meetings of that committee. Such a permission may only be given in accordance with a scheme made by the local authority. Such a scheme may include provision for the maximum or minimum numbers of co-opted members with voting rights.

353. Paragraph 13 grants the Secretary of State power to make regulations in relation to the exercise by authorities of the power to grant voting rights to co-opted members. It gives the Secretary of State:-

- the power to make regulations requiring authorities to include certain provisions within their schemes;
- the power to make regulations requiring local authorities to notify the Secretary of State of the making, variation or revocation of schemes; and
- the power to direct a local authority to vary its scheme.

354. Paragraph 14 requires an authority to make copies of its scheme available for inspection by members of the public at its principal office. An authority must also publish a notice recording the making or variation of the scheme, the details of the scheme, and details of how the scheme may be inspected by the public, in one or more local newspapers. If the scheme is revoked an authority must publish a notice indicating this.

355. Paragraph 80 of Schedule 7 amends section 21(10) of the Local Government Act 2000 so that the provision in that section that members of an overview and scrutiny committee who are not members of the local authority may not vote is

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subject to paragraphs 12 to 14 of Schedule 1 to the Act, which are inserted by section 115.

Section 116: Local polls

356. This section confirms, by creation of an express power, the right of a local authority to conduct an advisory poll. There is no obligation on a local authority to hold such a poll, nor any requirement to act in accordance with the result of such a poll.

357. The extent of this express power is broadly drawn, allowing the local authority to hold a poll on any matter relating to the services for which it is responsible (including where these may be delivered by a third party), or the finance that it commits to those services, or any other matter that is one relating to the authority's power under section 2 of the Local Government Act 2000 (authority's power to promote well-being of its area).

358. The section also provides express freedom to a local authority in determining, for any poll it proposes to hold, who to poll and how the poll is to be conducted. The clause also provides for the Secretary of State in England and the National Assembly for Wales in Wales to be able to issue guidance, to which local authorities must have regard, on facilitating participation by disabled people in a local poll.

Section 117: Generally accepted accounting practice.

359. The Secretary of State and the National Assembly for Wales are empowered to amend legislation by order in the light of generally accepted accounting practice. For local government, the relevant practices are mainly those prescribed in the codes issued by the Chartered Institute of Public Finance and Accountancy. The power is likely to be used to update local government accounting arrangements in line with developments in national standards.

Section 118: Appropriate sum under section 137(4) of the Local Government Act 1972 :

360. Section 118 amends section 137(4) of the Local Government Act 1972. Section 137 permits parish and town councils in England, and community councils in Wales, to spend up to a given amount in a financial year on items that are of direct benefit to their area in relation to which no other powers of expenditure exist. The amount is found by multiplying the appropriate sum by the relevant population of the authority's area. {The appropriate sum in England, which was set by section 137(4AA)(c), is £3.50 per elector, but this is due to be increased in advance of the Act, by statutory instrument, to £5.00 per elector in time for the financial year 2003/04. The appropriate sum is currently £5.00 per elector. This was set in England by the Local Authorities (Discretionary Expenditure Limits)(England) Order 2000 (SI 2002/2878) and in Wales by the Local Authorities (Discretionary Expenditure Limits) (Wales) Order 2000 (SI 2000/9000).

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361. Section 118 provides for the appropriate sum to be determined in accordance with a new Schedule 12B to the 1972 Act.

362. The Schedule states that the appropriate sum for the financial year in which the Act comes into force, will be £5.00. It also specifies that the sum will automatically be increased for each financial year thereafter in line with the annual change in the retail prices index. This is achieved by multiplying the appropriate sum for the preceding financial year by the ratio between the retail prices index for September of the preceding financial year and the corresponding figure a year earlier.

363. The Schedule also permits the Secretary of State to specify, by order, an alternative appropriate sum to that calculated with reference to changes in the retail prices index for parish and town councils in England; and for the National Assembly for Wales to specify an alternative appropriate sum for community councils in Wales.

Section 119: Use of fixed penalties for leaving litter and dog fouling offences.

364. Section 119 makes provision in response to the commitment made in the Local Government White Paper of December 2001 (*Strong Local Leadership – Quality Public Services*). Subsection (1) of section 119 allows local authorities to retain any sums which they receive from fixed penalties for leaving litter and dog faeces; these fixed penalty receipts will no longer have to be paid to the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales). Under subsections (2) and (3)(a) & (b) of this section an authority will be able to use its fixed penalty receipts to pay for its statutory functions relating to litter and dog faeces, including the function of giving fixed penalty notices for leaving litter and failing to remove dog faeces.

365. The Secretary of State and the National Assembly for Wales are given the power to make regulations adding to the activities which an authority may finance using its fixed penalty receipts (see subsection (3)(c) of section 119). So, for example, an authority could be given the ability to spend its fixed penalty receipts on specified activities related to improving the local environment which are not carried out under the provisions mentioned in subsections (3)(a) and (b). However, the new regulation making power will be sufficiently wide to give an authority complete freedom as to how it spends its receipts (see subsection (4) of section 119). Note that the regulation making power is referred to in subsection (2)(f) of section 100 (exercise of powers by reference to English authorities' performance categories).

Section 120: Regulation of cosmetic skin piercing and skin-colouring businesses

366. Section 120 amends section 15 of the Local Government (Miscellaneous Provisions) Act 1982 so that local authorities have powers to require persons carrying on the businesses of cosmetic piercing (referred to in the section as “cosmetic piercing”) and semi-permanent skin-colouring, including micropigmentation, semi-permanent make-up and temporary tattooing, to register themselves and their premises and to observe byelaws on hygiene and cleanliness. This amendment brings these businesses under the same regulatory framework that already exists in the 1982 Act

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for acupuncture, tattooing, ear piercing and electrolysis. This section should be read in conjunction with Schedule 6 which contains transitional provisions.

Schedule 6: Regulation of cosmetic skin piercing and skin-colouring businesses

367. Schedule 6 introduces transitional provisions to accompany section 120. The Schedule provides that:

(a) the amendment does not by itself alter the descriptions of persons and premises already registrable under section 15 of the Local Government (Miscellaneous Provisions) Act 1982 for tattooing, ear piercing and electrolysis.

(b) the amendment does not affect pending local authority resolutions to apply section 15 of the 1982 Act in their area.

(c) where a local authority has already resolved that section 15 of the 1982 Act should be brought into force in their area for tattooing, ear piercing and electrolysis the local authority will nevertheless be able to apply the registration and byelaws regime to cosmetic piercing and semi-permanent skin-colouring.

(d) a person and business already registered for ear piercing shall be counted as registered for cosmetic piercing until cosmetic body piercing is subsequently provided when a new registration would be required.

Section 121: Fire brigade establishment schemes etc

368. Section 121 repeals sections 19(3) to (6) and 19(8) of the Fire Services Act 1947 (FSA 1947) and paragraph (a) of section 7(2) of the Fire Services Act 1959 (FSA 1959) in respect of England and Wales. It removes the requirement on a fire authority to provide information on its establishment scheme annually to the Secretary of State, and to obtain the Secretary of State's approval before varying its establishment scheme by closing a fire station or reducing the number of fire appliances or firefighting posts. It also removes the Secretary of State's powers in relation to the making of establishment schemes, and the powers to order public local inquiries for the purposes of his functions under section 19. Section 7(2)(a) of the FSA 1959 applies section 19 to combined fire authorities newly created by combination scheme orders made under sections 5 and 6 of the FSA 1947. Part 1 of Schedule 8 details the extent of the repeals in the FSA 1947 and the FSA 1959.

369. Section 19(3) of the FSA 1947 is unnecessary as fire authorities provide information on their establishments by a number of other means. The repeal of sections 19(4), (5) and (6) will leave decisions on an establishment scheme to be taken locally by the fire authority. The Secretary of State's power under section 19(8) to hold a public local inquiry is also unnecessary; this power is retained under section 33(1) of the FSA 1947. (Section 19(1) and (2) of the FSA 1947 remain in force).

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370. The repeal of section 19(3) to (6) and 19(8) of the FSA 1947 and section 7(2)(a) of the FSA 1959 is consistent with the approach on the removal of unnecessary requirements for consents set out in the Local Government White Paper “*Strong Local Leadership – Quality Public Services*” published in December 2001; and with the recommendation of the Independent Review of the Fire Service chaired by Professor Sir George Bain published in December 2002.

Section 122: Repeal of prohibition on promotion of homosexuality

371. Section 122 repeals section 2A of the Local Government Act 1986 which prohibited local authorities from intentionally promoting homosexuality or publishing material with the intention of doing so or from promoting teaching in schools of the acceptability of homosexuality. A series of consequential provisions are also included in the Act to repeal provisions in other legislation that refer to section 2A.

General

Section 128: Commencement

372. Subsections (1) to (4) make express provision about the commencement of some of the provisions of the Act. Subsection (5) makes provision for sections 101 and 102 to come into force so far as they relate to Scotland. Subsection (6) provides for every remaining provision of the Act to be brought into force, so far as relating to England, by a commencement order made by the Secretary of State and, so far as relating to Wales, by a commencement order made by the National Assembly of Wales.

EUROPEAN CONVENTION ON HUMAN RIGHTS

373. The Local Government Act 2003 is considered to be compatible with the European Convention on Human Rights. In summary:

- Parts 4 and 5 - the Convention could be relevant to the Business Improvement Districts and business rates provisions in the Act, but there are grounds for considering each of these objectively and reasonably justified.
- Part 6 - all tax proposals touch on property rights protected under the Convention. Provisions giving authorities discretion over council tax discounts in their areas could mean persons in otherwise similar circumstances but living in different areas paying different amounts (possibly discrimination within Article 14). However, the proposals are justified in the public interest and proportionate to policy aims.
- Part 6 – section 85 allowing council tax data sharing for empty homes purposes, touches on the right to respect for family and private life. However, it is not considered to constitute an interference with that right and even if it does, it is justified and proportionate to policy aims relating to the economic well-being of the country.

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- Part 8 – the Convention touches on the provisions for charging and trading. These are considered to be proportionate and justified in the wider public interest because they will enable authorities to make better use of their assets and improve the delivery of public services.
- Part 8 – if Valuation Tribunals are held to determine civil rights, the provisions in the Act that make the administrative support systems independent of Office of the Deputy Prime Minister will improve the compatibility of the Valuation Tribunals with Article 6 of the Convention.

The following sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

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Stage	Date	Hansard Reference
House of Commons		
Introduction	25 November 2002	Col 46
Second Reading	7 January 2003	Vol 397 Col 45 – 141
Committee	21 + 23 January 2003 28 + 30 January 2003 4 + 6 February 2003 11 + 13 February 2003	Hansard Standing Committee A
Report and Third Reading	5 + 10 March 2003	Vol 400 Col 821 – 930 Vol 401 Col 40 – 130
House of Lords		
Introduction	11 March 2003	Vol 645 col 1291
Second Reading	3 April 2003	Vol 646 Col 1515 - 1559
Grand Committee	2 + 4 June 2003 10 + 11 June 2003 16 + 17 June 2003 23 + 24 June 2003	Vol 648 Col GC 55 116 Vol 648 Col GC 181 – 248 Vol 649 Col GC 47 – 112 Vol 649 Col GC 113 – 178 Vol 649 Col GC 179 – 222 Vol 649 Col GC 223 – 286 Vol 650 Col GC 1 – 58 Vol 658 Col GC59 – 112
Report	10 + 16 + 17 July 2003	Vol 651 Col 478 – 547 Vol 651 Col 892 – 964 Vol 651 Col 976 – 1009
Third Reading	10 September 2003	Vol 652 Col 300 – 395
House of Commons		
Commons Consideration of Lords Amendments	15 September 2003	Vol 410 Col 594 – 692
House of Lords		
Lords Consideration of Commons Reasons and Amendments	17 September 2003	Vol 652 Col 917 – 937
House of Commons		
Commons Consideration of Lords Amendment	17 September 2003	Vol 418 Col 1021 - 1039
House of Lords		
Lords Consideration of Commons Reason	18 September 2003	Vol 652 Col 1078 -1081

Royal Assent – 18 September 2003 House of Lords Hansard Vol 652 Col 1139
House of Commons Hansard Vol 410 Col 1122

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