

HIGHWAYS (FINANCING) BILL

Memorandum from the Department for Transport to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Highways (Financing) Bill ("the Bill"). The Bill was introduced in the House of Commons on 10 September 2027. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.
2. The Bill contains 59 delegated powers, which are set out in part C of this document. The Department has considered the use of the powers in the Bill as set out below and is satisfied that they are necessary and justified.

B. PURPOSE AND EFFECT OF THE BILL

3. The Bill delivers a new financing option for large-scale road schemes, helping to deliver the major road infrastructure projects the UK needs to drive growth across the country. The 'Regulated Asset Base' (RAB) model provided for by this Bill enables the private sector to deliver these types of schemes efficiently, reducing the financial burden on taxpayers and harnessing the benefits of private investment while ensuring strong regulatory oversight to protect the interests of users.
4. Under this model, which has been used successfully in other regulated sectors in the UK, a licensed private operator can finance, construct, operate and maintain infrastructure subject to independent regulatory oversight.
5. The Bill includes provisions to:
 - a. allow for the Office of Rail and Road (ORR) to be named as the Independent Regulator of schemes financed under this model. The Bill lays out the ORR's role in relation to a project, including their functions and their economic and enforcement powers;
 - b. provide a licence regime for the construction, operation, maintenance and improvement of specified roads. This includes laying out the type of road which can be specified in a licence, how applications can be made, how licences are issued, the types of condition a licence might attract and how they can be modified, transferred, renewed or revoked;
 - c. lay out the highway authority functions that the licence holder will need to carry out, and allow them to charge tolls for the use of the road/s they look after, including allowing them to enforce against non-payment of tolls;
 - d. ensure fair charges for users and transparency in service standards, safeguarding the interests of road users and the public;
 - e. provide transfer schemes to allow assets to be transferred from the Secretary of State to the licence holder, including land and various rights; and
 - f. provide a Special Administration Regime to protect the tax-payer in the event of the licence holder not being able to pay its debts, provide for an Operator of Last Resort to ensure the road(s) continuing availability to the road user and enable financial assistance to be provided as a backstop in case of unforeseen financial shocks which the licence holder cannot withstand in the short term.

6. This Bill contains 104 clauses, structured into 8 parts and 3 schedules.

C. DELEGATED POWERS

7. To support these policy objectives, the legislation includes 59 delegated powers. The Bill establishes a new regulatory and financing framework for strategic road infrastructure projects delivered using a RAB model. The legislation creates a licensing regime, establishes the ORR as the economic regulator, provides for tolling and enforcement arrangements, and creates associated oversight, transfer and insolvency provisions. Many of the powers are based on established precedents in comparable regulatory or road charging regimes, including the Energy Act 2023, the Civil Aviation Act 2012, and the Transport Act 2000. Where delegated powers are taken, this is generally because the Department considers that technical, operational and administrative detail is more appropriately contained in secondary legislation. The Bill is intended to establish a framework capable of supporting multiple strategic road projects delivered under the RAB model that are within scope, and delegated powers therefore provide the flexibility necessary to accommodate project-specific requirements and future developments without the need for further primary legislation.
8. The delegated powers in the Bill fall into the following thematic categories:
- a. New regulation-making powers and powers to issue statutory guidance, codes and statements of policy.
 - b. Provisions which modify, supplement or apply existing delegated powers.
 - c. Powers to amend or modify the effect of primary legislation.
 - d. Powers exercisable by other persons or bodies such as the ORR, the Lord Chancellor or His Majesty's Treasury.
 - e. Powers to make consequential amendments, transitional or saving provisions, and provisions relating to commencement.
9. The delegated powers in the Bill can be grouped and summarised as follows:
- a. **Licensing and regulatory framework.** The Bill establishes a new licensing regime for roads delivered under the RAB model and confers a number of powers on the Secretary of State to make provision about the operation of that regime. The powers included are listed below and are necessary because the detailed operational requirements of the regime are likely to evolve over time as experience is gained through implementation of the framework and as future projects are developed. Powers to:
 - i. require the ORR to have regard to guidance given to it by the Secretary of State when exercising its functions;
 - ii. determine the end of the initial transitional period during which licensing functions may be exercised by the Secretary of State;
 - iii. prescribe procedural requirements relating to licence applications; and
 - iv. provide for modifications of highway authority functions exercisable by licence holders where necessary to ensure the effective operation of the regime.
 - b. **Tolling and enforcement powers.** A substantial number of delegated powers relate to the operation and enforcement of tolling schemes. The Bill establishes the core framework for tolling in primary legislation but leaves detailed enforcement arrangements to regulations. Many of these powers draw on existing precedents for road user charging established in the Transport Act 2000. The detailed procedural, operational, and technological requirements associated with toll operation and

enforcement are considered better suited to secondary legislation, allowing any regimes made under this Bill to adapt to future developments in tolling technology and enforcement practice. These powers include provision for:

- i. the administration of penalty charge regimes;
 - ii. vehicle examination powers;
 - iii. powers of entry, search and seizure;
 - iv. vehicle immobilisation and removal powers; and
 - v. transitional arrangements for existing charging schemes operating under the Transport Act 2000.
- c. **Economic regulation and penalties.** The Bill establishes an economic regulatory regime overseen by the ORR. The intention is that the enforcement regime is set out in primary legislation, with secondary legislation providing flexibility to ensure penalties continue to operate effectively and proportionately into the future. In support of this framework, delegated powers enable:
- i. maximum penalty amounts for failures to comply with information notices to be updated over time;
 - ii. provision to be made concerning the calculation of qualifying turnover for the purposes of financial penalties;
 - iii. requiring the ORR to publish a statement of policy on penalties;
 - iv. requiring the ORR to make reports to the Secretary of State; and
 - v. the Secretary of State to direct the ORR to exclude from publication or disclosure, information that would be contrary to the interests of national security.
 - vi. the ORR, by notice, to require licence holder to pay a levy to the ORR.
- d. **Technical and interpretative provisions.** The Bill contains powers enabling the Secretary of State to make technical provision to support the effective functioning of the regime concerning matters such as:
- i. when persons are to be regarded as connected for the purposes of the Bill; and
 - ii. detailed aspects of the operation of the regulatory framework.
- e. **General and standard provisions.** The Bill also contains standard powers relating to consequential amendments; commencement; and transitional, transitory and saving provision.
- i. The consequential power includes a limited Henry VIII power enabling the amendment, repeal or revocation of primary legislation where necessary as a consequence of the Bill. Any exercise of that power affecting primary legislation is subject to the affirmative procedure.

Henry VIII powers:

10. The Bill contains 9 powers to amend primary legislation or to modify the effect of primary legislation through secondary legislation (so-called “Henry VIII powers”):
- a. Clause 17(3)(a), (b) and (c) – Functions exercisable by persons other than licence holder.
 - i. This enables regulations to specify functions of a highway authority or traffic authority that are to be exercisable by a person other than the licence holder, instead of or alongside the licence holder, and to provide for enactments concerning highway authority or traffic authority functions to have effect, as they apply to a highway specified in a licence, with specified modifications. Regulations under this power are subject to the affirmative procedure.
 - b. Clause 38(7) – Failure to comply with information notice.

- i. This enables regulations to replace the maximum fixed and daily penalty amounts specified in clause 35. Regulations under this power are subject to the affirmative procedure.
- c. Clause 54(7) – Amount of penalty: fixed amount.
 - i. This enables regulations to make provision, including provision amending Part 4, about the meaning of “qualifying turnover” and to make provision about its calculation. Regulations under this power are subject to the affirmative procedure.
- d. Clause 92 (in conjunction with the power in clause 87(1)): Consequential amendment of tolling legislation
 - i. Collection and enforcement regulations may amend, modify or repeal any existing legislative provision of an Act relating to tolling in respect of specified bridges or tunnels where this is necessary to give effect to the new arrangements. These regulations are subject to the negative procedure. This is considered appropriate in this case because the power may only be used to make technical and consequential changes to existing tolling legislation necessary to give effect to the new collection and enforcement arrangements, without altering the underlying power to charge tolls or the level of those tolls.
- e. Clause 98(4) – Interpretation of Act
 - i. This enables regulations to make provision about when one person is connected with another, including provision amending or otherwise modifying the connected-person provisions in clause 97(2) and (3). These regulations are subject to the negative procedure, which is considered appropriate in this case because the intention of this power is not to make substantive policy changes to the regime itself. The Bill already establishes the core concept of connected persons by reference to group undertakings, and so the regulation making power through the negative procedure is intended to provide flexibility to refine the concept over time as appropriate.
- f. Clause 99(1) - Consequential provision
 - i. This enables regulations to make provision consequential on the Act, including amendment, repeal or revocation of provision made by or under an Act passed before the Act or later in the same Parliamentary session. These regulations are subject to the negative procedure except for any exercise of that power affecting primary legislation, which is subject to the affirmative procedure.
- g. Schedule 2, paragraph 1 - Conduct of highways administration – application and general modifications of Schedule B1 to the Insolvency Act 1986
 - i. This will apply paragraph 110 of Schedule B1 1986 to our highways administration regime without amendment, which allows the Secretary of State to, by order, amend a provision of Schedule B1 Insolvency Act 1986 for certain purposes. Orders are subject to the negative procedure, which is considered appropriate due to the limited scope of the power. This is line with the precedent power in paragraph 110 Insolvency Act 1986, and other special administration regimes such as the Energy Act 2004 which also applies this power unmodified for its regime.
- h. Schedule 2, paragraph 31 – Conduct of highways administration - further Schedule B1 modifications for non-GB companies
 - i. This will enable regulations to make further modifications to the applied insolvency provisions to ensure that the highways

administration regime operates effectively in relation to non-GB companies. These regulations are subject to the negative procedure, which is considered appropriate in this case because the power is limited in nature. It is also in keeping with a precedent for this power in paragraph 33 of Schedule 20 to the Energy Act 2004, which was also adopted and applied by section 44 of the Energy Act 2023.

- i. Schedule 2, paragraph 40 - Conduct of highways administration – other modifications
 - i. This will enable regulations to apply and modify insolvency legislation, such as the Insolvency Act 1986, in relation to the special administration regime, and to make consequential amendments to the regime. These regulations are subject to the affirmative procedure.

Analysis of delegated powers by clause

Clause 1(5) and (6): General duty of ORR

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

11. Clause 1(5) creates a statutory duty by requiring the ORR to have regard to any guidance given by the Secretary of State in relation to the exercise of its functions under the Act. The Secretary of State must publish any guidance that it gives to the ORR for this purpose (subsection (6)). Through guidance, the Secretary of State will be able to articulate to the ORR clearly what expectations they have and how they intend the ORR to deliver specific requirements or strategic priorities.
12. This provision will ensure that guidance issued by the Secretary of State on how the ORR should deliver will be properly considered by the ORR, whilst retaining the ORR's regulatory independence. This balance is essential to ensure that the ORR has the space to act as an integrated, efficient, and commercially effective regulator for the RAB model, but in a way that facilitates the Secretary of State's role as being accountable to Parliament for the strategic road network in England.

Justification for taking the power

13. The Bill has been designed to create a flexible framework which can be applied to any RAB model road schemes which are within scope. This statutory duty for the ORR to have regard to any guidance given by the Secretary of State is necessary and proportionate because:
 - a. Without it, the ORR may find that they are unclear as to how the functions and duties should be particularised for the RAB model and therefore may misinterpret the policy intention;
 - b. Guidance can provide a clear and detailed mechanism to allow the Courts to interpret the Bill when holding the ORR to account for their actions in relation to the licence holder.
 - c. The ability to issue guidance gives the Secretary of State a proportionate and transparent way to influence the ORR's delivery and strategic direction.

14. The Secretary of State already issues similar guidance to the ORR for the purposes of them exercising their functions and duties as monitor of National Highways (section 13 of the Infrastructure Act 2015).
15. The power further allows the Secretary to act swiftly and transparently should there be operational failures, unforeseen crises or circumstances, or to correct the policy or direction of the ORR, if it is deemed necessary. This reinforces the democratic oversight within which the ORR will operate this regime.

Justification for the procedure

16. The Government considers the requirement in clause 1(6) for the Secretary of State to publish guidance issued to the ORR sufficient to enable scrutiny and transparency. The Government acknowledges the Committee's guidance that "mandatory guidance is a contradiction in terms". Accordingly, the Bill is clear that the ORR must "have regard" to guidance issued by the Secretary of State, but the guidance will not establish binding outputs.
17. The Bill is designed to provide the Secretary of State with the appropriate mechanisms to hold ORR to account while preserving its regulatory independence. The ability to issue guidance gives the Secretary of State a proportionate and transparent way to influence ORR's delivery and strategic direction. The need for this duty for the ORR to have regard to guidance is particularly acute because the RAB model is new to roads so this will be the first time it has been used in this sector. While the Secretary of State will continue to be able to steer the development of the strategic road network more widely through the Road Investment Strategy, this provision will offer them a mechanism to guide the ORR in managing a section of the strategic road network which will still form part of the wider integrated network. This power will give the Secretary of State the appropriate levers to ensure the strategic road network continues to deliver in the interests of road users, and the wider public.

Clauses 3(1) and 3(4)(a): Grant of Licence and clause 4(1): Consultation in relation to grant of licence

Power conferred on: The licensing authority

Power exercised by: Publication of notice

Parliamentary Procedure: None

Context and Purpose

18. Clause 3(1) gives the licensing authority a power to grant a licence. Clause 3(4)(a) defines 'licensing authority'. Read with clauses 3(1) and 3(5), this definition ensures that the Secretary of State and the ORR (with the Secretary of State's consent) both have the ability to exercise the power in clause 3(1) during the initial period. The ORR has the ability to exercise this power after the initial period.
19. Before granting a licence, the licensing authority must publish a notice of the proposal (clauses 4(1) and (4)).
20. Further subsections within the wider clauses 3, 4 and 5 provide for the ORR and the Secretary of State to notify relevant authorities of such a grant, give reasons for the grant and allow for the decision not to grant a licence to be appealed.
21. The purpose of these clauses is to give the licensing authority and the licence holder a clear framework for granting the licence and for the relevant notifications to be made.

Justification for taking the power

22. This type of clause is typical to a RAB licence regime. See for example section 7 of the Energy Act 2023. This power is necessary to allow the ORR, and the Secretary of State in the interim regime, to grant licences.
23. The legislation provides a framework for the RAB model for roads but does not specify projects for which it could be used. A licence would be specific to each specific project. It is necessary to be able to make individual grants of licence per project, and these individual grants are likely to be unique on each occasion. Allowing for the detailed licence negotiation, and for the grant to take account of differences between schemes is essential to ensure each licence is fit for purpose. The Department considers that this is a justification for retaining the power to grant each licence on a case-by-case basis.

Justification for the procedure

24. The power is exercised by publication of a notice of the proposal to grant the licence and then the granting of the licence.
25. Before granting a licence, the licensing authority must give notice of their intention to grant a licence by publishing a notice of the proposal (clause 4(1)(a) and (4)). The notice must be published in the manner the licensing authority considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the proposed licence. The notice must specify a period of not less than 28 days during which representations may be made about the proposed grant of the licence. The Department considers that this is an appropriate procedure for the granting of a licence and in line with other RAB model precedents such as the Energy Act.
26. It is the Government's intention that grants of licence and notices issued under these powers would facilitate the effective implementation of negotiating the licence for a licence holder, and are tied closely to the outcome of those negotiations. This is a largely administrative process and will facilitate the continued operation the licence regime in conjunction with the RAB model.

Clause 3(4)(b): Grant of licence

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

27. The provision enables the Secretary of State, by regulations, to specify the date on which that initial period ends. This allows flexibility to determine when the ORR is fully operational and ready to exercise its licensing functions independently. During the initial period, either the Secretary of State may grant a licence, or the ORR may do so with the consent of the Secretary of State, but the policy intention is that responsibility should transfer fully to the ORR as soon as practicable. Any licence granted by the Secretary of State during that period will be administered and enforced by the ORR. During the initial period, the Secretary of State and the ORR can also both exercise the power to modify the conditions of a licence, in case a modification is needed shortly after the grant of a licence and before the ORR is fully operational.
28. The purpose of the power is therefore to facilitate an orderly transition from a temporary ministerial licensing function to the permanent regulatory model established by the Bill, ensuring that delays in regulatory readiness do not delay the implementation of the regime or the delivery of qualifying infrastructure projects.

Justification for taking the power

29. The power is required because it is not possible at the time of enactment to determine precisely when the ORR will be fully prepared to undertake all licensing functions under the new regime.
30. Providing for the end of the initial period through regulations enables the transition to occur at the appropriate time once the Secretary of State is satisfied that the regulator is capable of discharging its functions effectively. A fixed date on the face of the Bill would risk either ending the transitional arrangements before the regulator is ready or retaining the Secretary of State's temporary role longer than necessary.
31. The power is consistent with a similar power in section 16 and paragraph 1 of Schedule 1 to the Energy Act 2023, which enables the Secretary of State to grant licences over an interim period.
32. The power is tightly constrained. It may only be used to specify the date on which the initial period ends and does not permit any amendment of the substantive licensing regime, the powers of the regulator, or the rights and obligations of licence holders.

Justification for the procedure

33. The negative procedure is considered appropriate because the power is administrative and transitional in nature. The regulations will specify the date on which the Secretary of State's temporary licence-granting function ceases to be available. They do not involve any policy choice beyond implementing the transition contemplated by the Bill, nor do they alter the legislative framework approved by Parliament.
34. This is consistent with the power in paragraph 1 of Schedule 1 to the Energy Act 2023, to which the negative procedure applies.

Clause 5(1): Applications for a licence

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

35. Clause 5(1) provides a power for the Secretary of State to make regulations about applications for a licence under the new RAB model established by the Bill.
36. The regulations are intended to set out the procedural and administrative framework for the licensing process, including the form and manner in which the application must be made, the information to be supplied in support of applications, and requiring an application to be accompanied by a fee.
37. As per subsection (2), the Secretary of State must consult with the ORR before making regulations under subsection (1). This ensures that the provisions made by regulations reflect the practical requirements of the licensing process and are informed by the expertise of the regulator responsible for granting licences.
38. The power will support the establishment of a clear and consistent licensing regime capable of being applied across different strategic highway projects delivered under the RAB model.

Justification for taking the power

39. The information, documentary and procedural requirements associated with licence applications are likely to need updating over time in response to operational experience, changing regulatory requirements and developments in technology, including digital application processes. Providing for these matters in regulations will allow the application process to be adjusted without the need for further primary legislation, while ensuring that the body granting the licence is able to obtain the information necessary to determine applications and assess applicants against the requirements of the licensing regime. The power also provides flexibility to establish and revise application fees and to make appropriate arrangements during the regime's initial transitional period.
40. This power is similar to that in section 9 of the Energy Act 2023, which establishes a similar licensing model. The power in the Energy Act provides for the Secretary of State to make provision, by regulations, about the form and manner in which an application for a licence must be made and requiring an application to be accompanied by a fee.

Justification for the procedure

41. The negative procedure is considered appropriate because the power is limited to administrative and procedural aspects of the licence application process which may need to be updated from time to time. The substantive features of the licensing regime, including the power to grant licences, eligibility requirements and the overarching licensing framework, are set out on the face of the Bill.
42. This is consistent with the power in section 9 of the Energy Act 2023, to which the negative procedure applies.

Clauses 7, 8, 9, 10 and 11: Licence conditions including modifications

Power conferred on: Secretary of State / the ORR

Power exercised by: Licence / by notice within the Licence regime

Parliamentary Procedure: None

Context and Purpose

43. This group of clauses allows the ORR and in the interim period, the Secretary of State, to include the conditions the authority considers appropriate in a licence (clause 8(1), and see also clause 8(2)), with the exception of conditions within clause 7(1), which must be included in all licences. Conditions which may be included in a licence under clause 8(2)(e) may require the licence holder to comply with any direction specified in relation to the licence. Clause 9(1) allows the Secretary of State to determine standard conditions which apply to all future licences. Clause 10 lays out the procedure for modification of standard licence conditions when granting a licence and clause 11 lays out the procedure for modification of all kinds of licence conditions after a licence has been granted. Modifications are subject to notice requirements (see clauses 10(2) and 11(3)). A notice requirement is a procedural safeguard to ensure specified persons are informed of proposed decisions and given an opportunity to make representations before those decisions take effect.
44. The purpose of this group of clauses is to give the ORR and the licence holder a clear framework for what they can both expect from licence conditions, while allowing the framework to flex for the needs of each individual project.

Justification for taking the power

45. This group of clauses is typical to all RAB licence regimes, see sections 11 to 14 of the Energy Act 2023. It is necessary to make such changes over the lifetime of a licence to take account of changes to and developments in the works under the licence and to ensure that the licence remains fit for purpose. For example, it is expected in the initial period that licences will contain conditions in relation to the construction of a project but once construction is complete, those licence conditions would become redundant and impossible for the licence holder to comply with. The Department considers that this is a justification for retaining the power to modify the licence while the licence holder would still require a revenue stream from the road user.

Justification for the procedure

46. It is the Government's intention that notices issued and modifications made under these powers would facilitate the effective implementation of negotiating the licence for a licence holder, and are tied closely to the outcome of those negotiations. The modifications envisaged here are largely administrative in nature and would be made to facilitate the continued operation of the licence regime in conjunction with the RAB model stage.
47. The Government believes that exercise of the power is subject to the appropriate levels of transparency and consultation in respect of such modifications. We therefore do not consider Parliamentary procedure appropriate for exercise of these powers.

Clause 11(7): Modification of licence conditions after grant

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and purpose

48. As explained above, in general, the licence conditions are a matter between the licence holder and the ORR. Clause 11(8) allows the Secretary of State to issue a binding direction preventing the ORR from modifying a licence condition after a licence has been issued. In practice, directions will be in writing and may be enforced through civil proceedings.
49. Given that the Secretary of State is ultimately responsible to Parliament for the provision of the strategic road network as a whole, they need the ability to intervene directly, as necessary and as a last resort.

Justification for taking the power

50. The Bill has been designed to provide the ORR with effective oversight over the RAB model for roads. The direction-making power is necessary and proportionate because:
- a. The Secretary of State retains overall democratic accountability for the provision of the strategic road network in England. They must be able to respond to ORR's performance and outcomes in negotiating the Licence if ORR is failing to deliver.
 - b. Without a formal direction-making power, the Secretary of State would lack a decisive mechanism to ensure compliance where ORR is pursuing

a course inconsistent with government policy or failing to discharge its obligations.

- c. Directions provide a clear, binding mechanism to hold the ORR to account where other interventions, including guidance, have not been sufficient.

51. The power ensures the Secretary of State can act swiftly and transparently should there be serious failures, unforeseen circumstances, or to correct the policy of, or strategic direction set by, the ORR if deemed necessary.

Justification for the procedure

52. Directions currently issued by the Secretary of State to National Highways are not subject to Parliamentary scrutiny, so there is clear precedent for this approach. For example, the direction-making power in the Infrastructure Act 2015, section 6, for National Highways follows the same procedure.

53. The power is administrative and case-specific in nature and is intended to enable the Secretary of State to intervene where modification of a licence condition would be inconsistent with wider government objectives or the effective operation of the strategic road network. Requiring Parliamentary scrutiny of individual directions would not be proportionate and could impede the Secretary of State's ability to act swiftly where necessary.

Clause 12(6): Revocation of licence by agreement etc

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and purpose

54. As explained above, in general the management of the licence is a matter between the licence holder and the ORR. Clause 12(6) allows the Secretary of State to issue a binding direction preventing the ORR from revoking a licence. In practice, directions will be in writing and may be enforced through civil proceedings. Given that the Secretary of State is ultimately responsible to Parliament for the provision of the strategic road network as a whole, they need the ability to intervene directly, as necessary and as a last resort.

Justification for taking the power

55. The Bill has been designed to provide the ORR with effective oversight over the RAB model for roads. The direction-making power is necessary and proportionate because:

- a. The Secretary of State retains overall democratic accountability for the provision of the strategic road network in England. They must be able to respond to ORR's performance and outcomes in negotiating the Licence if ORR is failing to deliver.
- b. Without a formal direction-making power, the Secretary of State would lack a decisive mechanism to ensure compliance where ORR is pursuing a course inconsistent with government policy or failing to discharge its obligations.
- c. Directions provide a clear, binding mechanism to hold the ORR to account where other interventions, including guidance, have not been sufficient.

56. The power ensures the Secretary of State can act swiftly and transparently should there be need for the licence not to be revoked which may not be known to the ORR, for serious failures, unforeseen circumstances, or to correct the policy of, or strategic direction set by, the ORR if deemed necessary.

Justification for the procedure

57. As noted above, directions currently issued by the Secretary of State to National Highways are not subject to Parliamentary scrutiny, so there is clear precedent for this approach. For example, the direction-making power in the Infrastructure Act 2015, section 6 for National Highways follows the same procedure.
58. The power is administrative and case-specific in nature and is intended to enable the Secretary of State to intervene in exceptional circumstances within the framework established by Parliament in the Bill. Requiring Parliamentary scrutiny of individual directions would not be proportionate and could impede the Secretary of State's ability to act swiftly where necessary. The Secretary of State remains accountable to Parliament for the exercise of the power.

Clause 13(1): Revocation of licence on direction of Secretary of State

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and purpose

59. As explained above, in general the management of the licence is a matter between the licence holder and the ORR. Clause 13(1) allows the Secretary of State to issue a binding direction requiring the ORR to revoke a licence, if satisfied that revocation of the licence is necessary in the interests of national security. In practice, directions will be in writing and may be enforced through civil proceedings.
60. Given that the Secretary of State is ultimately responsible to Parliament for the provision of the strategic road network as a whole, they need the ability to intervene directly to require revocation of a licence, as necessary and as a last resort in the interests of national security.

Justification for taking the power

61. The Bill has been designed to provide the ORR with effective oversight over the RAB model for roads. The direction-making power is necessary and proportionate because:
- a. The Secretary of State retains overall democratic accountability for the provision of the strategic road network in England. They must be able to intervene in licence management in the interests of national security, as a last resort where necessary.
 - b. Without a formal direction-making power, the Secretary of State would lack a decisive mechanism to ensure compliance where ORR is pursuing a course inconsistent with national security.
 - c. Directions provide a clear, binding mechanism to hold the ORR to account where other interventions, including guidance, have not been sufficient.

62. The power therefore ensures the Secretary of State can act swiftly and transparently should there be need for the licence to be revoked which may not be known to the ORR.

Justification for the procedure

63. As noted above, directions currently issued by the Secretary of State to National Highways are not subject to Parliamentary scrutiny, so there is clear precedent for this approach. For example, the direction-making power in section 6 of the Infrastructure Act 2015 for National Highways follows the same procedure.

64. The power is administrative and case-specific in nature and is intended to enable the Secretary of State to intervene in exceptional circumstances within the framework established by Parliament in the Bill. Requiring Parliamentary scrutiny of individual directions would not be proportionate and could impede the Secretary of State's ability to act swiftly where necessary. The Secretary of State remains accountable to Parliament for the exercise of the power.

65. Further, given that directions are intended to be a reactionary lever used as a last resort, publication provides appropriate transparency whilst ensuring the Secretary of State retains the ability to act swiftly where required.

Clause 14(2): Transfer of licences

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

66. A licence may only be transferred to another company with the consent of the ORR. Clauses 14 and 15 set out the procedure which the ORR must follow before consenting to a transfer, including requirements to publish a notice of the proposed transfer, consult interested parties and notify the Secretary of State. Clause 14(2) allows the Secretary of State to direct the ORR not to consent to the proposed transfer, if satisfied that the direction is necessary in the interests of national security.

67. The purpose of the power is to provide a mechanism through which the Secretary of State may intervene in exceptional circumstances where it is necessary in the interests of national security. The power reflects the Secretary of State's continuing responsibility and accountability to Parliament for the strategic road network in England.

Justification for taking the power

68. The Bill has been designed to establish an independent regulatory regime overseen by the ORR while maintaining appropriate democratic accountability through the Secretary of State. The direction-making power is necessary and proportionate because:

- a. the Secretary of State retains overall responsibility for the strategic road network in England and must therefore be able to intervene where a proposed transfer could have significant implications for national security;
- b. although the ORR will assess proposed transfers in accordance with its regulatory functions, there may be circumstances in which the Secretary of State possesses information relating to national security, which may not otherwise form part of the ORR's assessment;

- c. without a power of direction, the Secretary of State would lack an effective mechanism to prevent the transfer of a licence where consent would be contrary to the national security interests which Parliament expects the Secretary of State to safeguard; and
 - d. the power provides a clear and transparent means by which the Secretary of State may intervene in exceptional cases, while leaving the ordinary operation of the transfer regime to the independent regulator.
69. The Department therefore considers that the power strikes an appropriate balance between the independence of the ORR and the Secretary of State's accountability for the effective and secure operation of the strategic road network.

Justification for taking the procedure

70. As noted above, directions currently issued by the Secretary of State in respect of National Highways are not subject to Parliamentary scrutiny, so there is clear precedent for this approach. For example, the direction-making power in section 6 of the Infrastructure Act 2015 for National Highways follows the same procedure.
71. The power is administrative and case-specific in nature and is intended to enable the Secretary of State to intervene in exceptional circumstances within the framework established by Parliament in the Bill. Requiring Parliamentary scrutiny of individual directions would not be proportionate and could impede the Secretary of State's ability to act swiftly where necessary. The Secretary of State remains accountable to Parliament for the exercise of the power.

Clause 17(3): Functions exercisable by persons other than licence holder

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

72. Clause 16(1) and (2), supplemented by 16(7) and 16(8), provide that the holder of a licence will be the highway authority and traffic authority for each highway specified in the licence. In addition, clause 16(5) provides that functions conferred by legislation on a strategic highways company, in its capacity as highway authority or traffic authority, are to have effect in relation to a highway specified in a licence as if they were conferred on the licence holder.
73. However, clause 17(1) identifies certain highway authority and traffic authority functions that are not exercisable by a licence holder and 17(2) confirms that they instead are exercisable by the relevant strategic highways company. While the Bill is intended to transfer operational highway and traffic authority functions to licence holders, it is not appropriate for every function currently exercisable by a highway authority or traffic authority to transfer automatically. In addition, some enactments may require modification to ensure that they operate appropriately where functions are exercised by a licence holder rather than by a public authority, or functions are exercised by a strategic highways company with respect to a highway specified in a licence.
74. Clauses 17(3)(a) enables the Secretary of State, by regulations, to change who may exercise a function mentioned in subsection (1) to any person, other than the licence holder. Clause 17(3)(b) enables the Secretary of State, by regulation, to

specify highway authority or traffic authority functions that are to be exercisable by a person other than the licence holder, instead of or alongside the licence holder. Clause 17(3)(c) enables the Secretary of State, by regulations, to modify the effect of enactments as they apply in relation to the exercise of highway authority or traffic authority functions (or a strategic highway company acting in that capacity) with respect to a highway specified in a licence. The powers ensure that the licensing regime can operate effectively within the existing highways legislative framework and provides flexibility to address legislative functions that require different treatment without the need for further primary legislation.

Justification for taking the power

75. It is intended that a licence holder will operate a licensed highway on a day-to-day basis in a manner akin to a Strategic Highway Company (SHC). In this regard it is necessary that they have the normal functions of an SHC, including the relevant duties to maintain the highway and ensure access to it. However, the role of a SHC is broader than that of a licence holder. It has responsibility for wider stewardship of the network and therefore has functions to meet this end. For example, the power to make orders regarding the classification of roads or to restrict public access to the highway. Some of these functions will be restricted, or adapted on the face of the Bill, but the functions conferred on a SHC have built up over decades and are found across a large range of primary and secondary legislation. It is therefore not practicable to specify on the face of the Bill all of the amendments that might be needed and it may, in future be necessary to make further modifications. This approach allows the most consequential amendments to be dealt with in the Bill and for other amendments to be dealt with by secondary legislation.

Justification for the procedure

76. The affirmative procedure is considered appropriate because the regulations may alter the operation of primary and secondary legislation by:
- a. providing that statutory functions that would otherwise be exercisable by the licence holder by virtue of clause 16 will be exercisable by another person (instead of or as well as the licence holder); and
 - b. modifying the effect of provisions relating to functions of a highway authority or traffic authority in enactments to ensure they work as intended for specified highways.
77. The general principle is that changes made to primary legislation by secondary legislation should be subject to the affirmative procedure, in order to provide an appropriate degree of Parliamentary scrutiny. While the power does not allow for direct amendment of primary legislation by regulations, it enables the modification of the effect of primary legislation so therefore we consider the affirmative procedure to be appropriate.

Further comment

78. For completeness, it is noted that pursuant to clause 16, the licence holder will be both the highways authority and traffic authority for a road specified in the licence (sub-clauses (1) and (2), supplemented by sub-clauses (7) and (8)), and, where an enactment confers a function on a strategic highways company in its capacity as the highway authority or traffic authority for a trunk road, the enactment has effect in relation to a highway specified in a licence as if the function were

conferred in the licence holder (sub-clause 5). Certain enactments (in particular the Highways Act 1980 and the Road Traffic Regulation Act 1984) confer delegated powers (for example, order-making powers) on highways authorities, traffic authorities, and strategic highways companies. The intention is that any delegated powers conferred on such bodies will be carved-out from the functions of a licence holder, as it would not be appropriate for a private entity to exercise these powers. This will principally be done by clause 17(1), which provides that a licence holder may not exercise (among others) functions of a highways authority or traffic authority relating to the making of schemes, regulations, orders or directions under the Highways Act 1980 and Road Traffic Regulation Act 1984.

Clause 20: Exercise of compulsory purchase powers by strategic highways company

Power conferred on: Strategic Highways Company

Power exercised by: Order

Parliamentary Procedure: None

Context and Purpose

79. Clause 20 extends existing compulsory purchase powers under section 239 of the Highways Act 1980 for a strategic highways company to acquire land situated in the area for which the company is appointed, so that a strategic highways company can acquire, on behalf of the licence holder, land needed for works secured under or by virtue of a licence. Compulsory purchase powers under section 239 Highways Act 1980 are subject to the procedure set out in the Acquisition of Land Act 1981, pursuant to which the authorisation of a compulsory purchase by a strategic highways company shall be conferred by order confirmed by the Minister.

Justification for taking the power

80. The amendment does not create a new power of compulsory purchase. Rather, it extends the scope of existing powers so that compulsory purchase powers may be exercised where appropriate to ensure that licensed highway works can proceed where land can't be acquired by agreement, subject to a number of additional safeguards: the licence holder has made reasonable attempts to acquire the land by agreement, the licence holder has considered alternative courses of action to acquire the land and concluded acquiring the land is the best option, there is a compelling public interest for the land to be acquired compulsorily, and the strategic highways company must consult with the ORR before proceeding with the purchase

Justification for the procedure

81. The clause brings works to be secured under a licence within the scope of relevant existing compulsory purchase powers under section 239 of the Highways Act 1980 (subject to additional safeguards).
82. The existing statutory framework for orders under section 239 contains safeguards set out in the Acquisition of Land Act 1981, including requirements relating to publication of notice, objections and, where applicable, inquiries.
83. The Government therefore considers it appropriate that works to be carried out under the licensing regime should be subject to the same established procedure

as other compulsory purchase powers. Requiring an additional parliamentary procedure would be disproportionate and the amendment merely extends its application to a further category of proposed highway.

Clause 22: Litter functions

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

84. Clause 22 provides the Secretary of State with a power to make regulations concerning the duty to maintain highways free from litter under section 89 of the Environmental Protection Act 1990. The clause also enables regulations to make provision for the exercise of litter enforcement functions by the licence holder in respect of the specified highway.

Justification for taking the power

85. This power allows the Secretary of State to tailor regulations appropriately to the licence holder in relation to litter enforcement functions. This accounts for the need to ensure there is power in the Bill to make regulations that give the licence holder litter enforcement powers, but account for its nature as a private company.

Justification for the procedure

86. The negative procedure provides an appropriate balance between Parliamentary scrutiny and the flexibility required to ensure that the litter functions are adapted to the licence holder, and the relevant specified highway. They are likely to be similar to existing powers in the Environmental Protection Act 1990 and regulations made under that Act.

Clause 24(2)(b): Charging of tolls

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

87. Clause 24(2) makes provision about liability for payment of tolls charged under a licence. The default position is that a toll charged in respect of a road vehicle is payable by the person who is the registered keeper of the vehicle at the time the toll is charged. Clause 24(2)(b) enables the Secretary of State, by regulations, to specify circumstances in which liability for payment of a toll may instead fall on another person specified in the regulations.

88. The purpose of the power is to provide flexibility to address circumstances in which it would not be appropriate for liability to rest with the registered keeper, for example where another person has a more direct connection with the use or keeping of the vehicle for the purposes of the tolling regime; for instance where a car is being hired. The power supports the effective operation of the tolling framework while ensuring that liability can be allocated appropriately in different circumstances.

Justification for taking the power

89. The tolling framework is intended to support a range of future road schemes and will need to accommodate differing operational requirements while maintaining consistency across the regime. The circumstances in which liability should fall on a person other than the registered keeper are likely to involve detailed operational and administrative considerations which may need to evolve over time.
90. The current two most common legislative bases for regimes that require users to pay for the use of roads in England are the New Roads and Street Works Act 1991 and the Transport Act 2000 ("the 2000 Act"). Both frameworks make provision for important aspects of the charging regime to be set out in secondary legislation. The Department considers it appropriate to take a similar approach in relation to the detailed allocation of liability for tolls under the licensing regime established by the Bill.
91. The power is narrowly drawn. The Bill establishes the general rule that tolls are payable by the registered keeper of the vehicle, while the regulation-making power enables exceptions to be made where another person is more appropriately liable in specified circumstances. This provides sufficient flexibility to ensure the regime can operate effectively without the need for further primary legislation.

Justification for the procedure

92. Regulations made under clause 24(2)(b) are subject to the negative procedure. This is considered appropriate because the power concerns detailed procedural and administrative requirements relating to the allocation of liability for payment of tolls within the framework established by the Bill. The regulations will not create a new power to charge tolls, alter the circumstances in which tolls may be charged, or amend the core features of the tolling regime. Instead, they will make provision about who is liable to pay a toll in specified situations. The Department therefore considers that the power is technical and operational in nature and that the negative procedure provides an appropriate level of Parliamentary scrutiny while allowing sufficient flexibility to respond to future operational requirements. Section 197 of the 2000 Act provides that regulations made in relation to road user charges under the 2000 Act are subject to the negative procedure.

Clause 26(1): ORR code relating to charging of tolls

Power conferred on: The ORR

Power exercised by: Publication of a code

Parliamentary Procedure: None

Context and Purpose

93. Clause 26(1) requires the ORR to prepare and publish a code relating to the charging of tolls under a licence which has been or is to be granted. The code must contain such principles and criteria as the ORR considers appropriate with a view to ensuring that tolls are charged in a way which is fair and transparent for users of the chargeable highway. Clause 26(3) enables the ORR to revise or replace the code and requires any revised or replacement code to be published.
94. The purpose of the code is to provide a transparent and publicly available framework within which licence holders will design and operate their tolling schemes. The code will promote consistency across licensed roads while allowing the detailed arrangements for individual tolling schemes to reflect the particular characteristics of a project. It will also provide clarity to road users, investors and licence holders regarding the principles and criteria that the ORR expects to be

applied when tolls are charged. In addition, the code supports the requirement in clause 24(1)(b) that tolls may only be charged if the tolling scheme complies in all material respects with the applicable ORR code.

Justification for taking the power

95. The Bill establishes the underlying framework for the charging of tolls, including the circumstances in which tolls may be charged and the requirement for licence holders to operate a tolling scheme. However, many of the matters relevant to ensuring that toll charging remains fair and transparent are regulatory and operational in nature and are likely to evolve over time as experience is gained through implementation of the regime.
96. The code provides a flexible mechanism through which the ORR can articulate and update the principles and criteria that should apply to toll charging without the need for further primary legislation. This is particularly important given that the Bill establishes a new tolling regime for roads delivered through the Regulated Asset Base model and the detailed approach to toll charging may need to adapt in light of operational experience, technological developments and future projects.
97. The use of published codes is common in economic regulatory regimes. For example, the Communications Act 2003 empowers Ofcom to publish codes setting out detailed regulatory requirements applicable to communications providers, supplementing the framework established by primary legislation. The Department considers that the ORR, as the independent regulator responsible for oversight of licence holders and tolling arrangements, is best placed to determine and maintain the detailed principles required to support the effective operation of the regime.

Justification for the procedure

98. The Department considers that no Parliamentary procedure is required for the publication, revision or replacement of the code.
99. The code does not create new legal obligations beyond the framework established by Parliament in the Bill. Rather, it provides guidance in the form of principles and criteria which support the operation of the statutory tolling regime and assist licence holders in complying with their existing obligations.
100. The code is required to be published and any revised or replacement version must also be published, ensuring transparency and public accessibility.
101. Requiring Parliamentary procedure would not be proportionate given that the code is regulatory and operational in character and is intended to provide flexibility for the ORR to respond to developments in the operation of the tolling framework.

Clause 27(1): Enforcement of tolls: penalty charges

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

102. Clause 27(1) confers a power on the Secretary of State to make regulations for or in connection with the enforcement of a requirement to pay a toll. The power enables detailed provision to be made in relation to the enforcement framework supporting tolling schemes made under Part 3 of the Bill. Regulations may, in particular, confer powers on licence holders in connection with the imposition of penalty charges, and make provision in relation to the rates of penalty charges.

103. Clause 27(3) sets out a non-exhaustive list of matters that may be addressed in those regulations, including the form and content of notices, payment arrangements, the identification of the person liable for a penalty charge, collection of evidence of non-payment, and methods of enforcement and recovery. Clause 27(4) to (6) makes further provision in relation to the setting of penalty charge rates, including the engagement of the ORR in this process.
104. The purpose of the power is to provide the detailed framework necessary for the effective enforcement of tolling schemes. The Bill establishes the principle that tolling schemes may be supported by a civil penalties regime, but the detailed operational arrangements are left to regulations. This will enable the creation of a coherent and enforceable system for securing payment of tolls and dealing with non-payment, while ensuring that users have appropriate procedural protections, including opportunities for review and appeal.

Justification for taking the power

105. The provisions described in clause 27(3) relate to the practical operation of a penalty charge regime. Matters such as penalty charge levels, discounts for early payment, notification requirements, payment methods and enforcement may need to be revised in light of operational experience, developments in tolling technology, changes in enforcement practice, and the circumstances of particular tolling schemes.
106. The power also provides flexibility to establish a consistent enforcement framework across different licensing schemes while accommodating differences in their operation and design. Given the range of future schemes to which the framework may apply and the need for the regime to remain responsive over time, regulations are the most appropriate vehicle for these detailed provisions.
107. Section 173 of the Transport Act 2000 enables the appropriate national authority to, by regulations, make provision for or in connection with the imposition and payment of penalty charges relating to a charging scheme.

Justification for the procedure

108. The negative procedure provides an appropriate balance between Parliamentary scrutiny and the flexibility required to ensure that the penalty charge regime remains effective, proportionate, and capable of adapting to future operational requirements without the need for further primary legislation.
109. This approach is also consistent with the existing road user charging framework under section 197 of the Transport Act 2000, where regulations relating to charging and enforcement arrangements are subject to the negative procedure.

Clause 29(1), (2) and (5): Examination, entry, search and seizure

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

110. Clause 29 confers powers enabling the Secretary of State, by regulations, to make provision for the investigation and enforcement of tolling requirements under the licensing regime established by the Bill.
111. Clause 29(1) enables regulations which confer powers on licence holders to examine road vehicles for specified purposes, including determining whether documents or equipment required by the tolling regime are present and operating

- correctly, and whether equipment has been interfered with for the purpose of avoiding payment of tolls or identification following non-payment.
112. Clause 29(2) enables regulations which confer powers on licence holders of entry into a road vehicle where there are reasonable grounds to suspect certain forms of toll evasion or associated misconduct, including interfering with equipment and the use of false documents).
113. Clause 29(5) enables regulations which confer powers on licence holders to seize and detain items as evidence, including the detaching of items from vehicles. This evidence must be in relation to offences relating to interference with tolling equipment, obscuring the registration plate of a vehicle, or making false representations, for the purposes of avoiding payment of a toll.
114. Any regulations made under these powers can only authorise the examination of, or entry into, a vehicle if it is on a highway.
115. The purpose of these powers is to provide licence holders with the investigatory tools necessary to detect, investigate, and enforce against deliberate toll evasion and related offences and to put in place the necessary safeguards. The powers form part of the wider enforcement framework established by Part 3 of the Bill and are intended to support the effective operation of tolling schemes operating on licensed roads. The policy intention is broadly to replicate, for roads licensed under the Bill, enforcement mechanisms that are available in relation to road user charging schemes and other tolling regimes.

Justification for taking the power

116. The tolling regime established by the Bill is intended to support modern toll collection systems, including free-flow tolling and other technology-based approaches to charging, but remain technology neutral. The practical requirements associated with investigating non-payment, identifying toll evasion, and preserving evidence are highly operational and technical matters which are likely to evolve over time in response to developments in tolling technology, vehicle technology, and methods of evasion.
117. Regulations will provide flexibility to make detailed provision about matters such as who may exercise these powers, the circumstances in which they may be exercised, the procedural safeguards that apply, evidential requirements, authorisation requirements, and the handling, retention and return of seized property. These matters are more appropriately dealt with in secondary legislation than on the face of the Bill.
118. The policy intention is broadly to replicate established investigatory and enforcement powers available in existing charging and tolling regimes. Comparable provision is made in relation to road user charging schemes under the Transport Act 2000, where Parliament has accepted that detailed operational matters relating to enforcement should be provided for through secondary legislation. The Department considers that a similar approach is appropriate for the tolling regime established by the Bill.
119. Without powers of examination, entry and seizure, licence holders may be unable effectively to detect, investigate, or prove deliberate attempts to evade toll charges under certain tolling methods. This could undermine the enforcement regime and the toll revenues that support the construction, operation, maintenance and improvement of licensed road infrastructure or force the licence holder to use a specific tolling system; government is keen to avoid prescribing the method of toll collections for licence holders.

Justification for the procedure

120. The Department considers that the negative procedure provides the appropriate level of Parliamentary scrutiny.

121. The Bill itself establishes the purpose and scope of the power by specifying the circumstances in which vehicle examination, entry and seizure powers may be conferred and the offences to which they relate. The regulations will deal with the detailed operation of the examination regime rather than the underlying policy.
122. The regulations are expected to be technical and operational in nature and may require updating in response to developments in tolling technology and enforcement practices. The negative procedure therefore provides an appropriate balance between Parliamentary scrutiny and the flexibility needed to ensure that the enforcement framework remains effective over time.
123. This approach is also consistent with Section 197 of the Transport Act where regulations are subject to the negative procedure.

Clause 30(1): Immobilisation etc

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

124. Clause 30(1) enables the Secretary of State to make regulations which confer powers on licence holders for or in connection with notification of immobilisation, immobilisation, removal, storage, and release of vehicles, together with powers concerning the sale or destruction of vehicles that are not reclaimed. The regulations may also confer powers on licence holders enabling them to state the conditions that must be satisfied before a vehicle may be released and to impose appropriate safeguards.
125. Any regulations under these powers can only authorise, or require, the fitting of an immobilisation device to, or the removal of, a vehicle if it is on a highway.
126. These powers form part of the wider enforcement framework supporting the Bill's bespoke tolling regime. The policy intention is to provide licence holders with an effective mechanism for enforcing compliance with tolling requirements and recovering unpaid tolls and associated penalties. The wider policy objective is to establish a comprehensive enforcement regime for licensed toll roads operating under the regulated asset base model, ensuring that toll revenues can be collected efficiently and that deliberate non-payment can be addressed effectively.
127. The policy intention is broadly to replicate, for licensed toll roads, the established enforcement framework already available for road user charging schemes under section 175 of the Transport Act 2000.

Justification for taking the power

128. The Government considers it necessary to take this power because the detailed arrangements governing vehicle immobilisation, removal, storage, and disposal are operational and technical matters which require flexibility and may need to evolve over time.
129. The regulations will enable detailed provision to be made about matters such as:
- a. the circumstances in which a vehicle may be immobilised or removed;
 - b. the notices which must be given;
 - c. the conditions for release of a vehicle;
 - d. storage arrangements and charges;
 - e. procedural safeguards; and

- f. the circumstances in which an unclaimed vehicle may be sold or destroyed.
130. These matters are detailed operational provisions which are more appropriately dealt with in secondary legislation than on the face of the Bill. The policy intention is also that the tolling regime should remain capable of accommodating future developments in tolling systems, enforcement practices and charging technologies. Delegated legislation provides the flexibility needed to ensure that the enforcement regime remains effective and proportionate over time.
131. Without powers of this kind, licence holders may have limited means of enforcing compliance against persistent non-payers, which could undermine the effectiveness of the tolling regime and the collection of revenues used to fund the construction, operation, maintenance and improvement of licensed road infrastructure.

Justification for the procedure

132. The Department considers that the negative procedure provides the appropriate level of Parliamentary scrutiny.
133. The Bill establishes the framework for the power by identifying the types of enforcement measures that may be included in a tolling scheme and by limiting their use to the context of tolling enforcement on specified highways. The regulations will deal with the detailed operation of those measures and the safeguards applicable to their exercise.
134. The regulations are expected to contain detailed procedural and operational provisions rather than substantive policy choices. As those provisions may require amendment in response to changes in enforcement practice, operational experience or technological developments, the Government considers that the negative procedure strikes the appropriate balance between Parliamentary scrutiny and the flexibility needed to maintain an effective tolling enforcement regime.
135. This approach is also consistent with Section 197 of the Transport Act 2000 where regulations are subject to the negative procedure.

Clause 32(3): Enforcement of contraventions by licence holder

Power conferred on: The ORR

Power exercised by: the ORR issuing a formal direction

Parliamentary Procedure: None

Context and purpose

136. Clause 32 applies where the ORR has reasonable grounds for believing that the holder of a licence has either failed to comply with an obligation imposed under Part 3 of the Bill or has charged or collected tolls otherwise than in accordance with clause 24(1). The clause enables the ORR to treat such conduct as if it were a contravention of a licence condition for the purposes of its wider enforcement powers under Part 4.
137. Clause 32(3) further enables the ORR to give a direction prohibiting the holder of a licence from charging and collecting tolls in respect of a chargeable highway. The direction may remain in force until a relevant failure has been remedied, or until the ORR is satisfied that tolls are being charged and collected in accordance with the requirements of the Bill. The direction may apply to all tolls or to specified descriptions of tolls.

138. The purpose of the power is to provide the ORR with a targeted and immediate regulatory tool where there are concerns about the lawful operation of a tolling scheme. It enables the ORR to protect road users and preserve confidence in the tolling regime while longer-term enforcement action is considered or pursued under Part 4 of the Bill.

Justification for taking the power

139. The Bill has been designed to provide the ORR with effective oversight over the RAB model for Roads. Giving the ORR this power of direction is consistent with other enforcement regimes of RAB models. The direction-making power is necessary and proportionate because:

- a. The ORR must be able to respond urgently to any suggestion that the licence holder is not complying with their licence conditions or fulfilling their obligations under the Bill.
- b. Without a formal direction-making power, the ORR would lack a decisive mechanism to ensure compliance where ORR is pursuing a course of action as a matter of urgency.
- c. Directions provide a clear, binding mechanism to hold the licence holder to account where other interventions, including other powers of enforcement such as fining the licence holder, have not been sufficient.

140. The power ensures the ORR can act swiftly and transparently should there be serious failures, unforeseen circumstances, or the need for urgent correction to protect road users from incorrect charging. A direction of this nature can be challenged in the courts, which reinforces the protection for the licence holder under this regime, while giving the ORR the powers necessary to protect road users.

Justification for the procedure

141. Directions issued under this power give the ORR the necessary enforcement powers they require to efficiently and independently operate the licence regime. Similar powers in other RAB models are not subject to Parliamentary scrutiny, and there is clear precedent for this approach. For example, the direction-making power in the Infrastructure Act 2015 for National Highways follows the same procedure.

142. The power is administrative and case-specific in nature and is intended to enable the Secretary of State to intervene in exceptional circumstances within the framework established by Parliament in the Bill. Requiring Parliamentary scrutiny of individual directions would not be proportionate and could impede the Secretary of State's ability to act swiftly where necessary. The Secretary of State remains accountable to Parliament for the exercise of the power.

Clause 33(1): Existing road use charging schemes

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

143. Clause 33(1) enables the Secretary of State to make regulations providing for existing trunk road charging schemes made under the Transport Act 2000, and orders granting development consent made under the Planning Act 2008 which authorise the charging of tolls, to have effect as they were tolling schemes made by the holder of a licence. The clause also enables consequential, supplementary and transitional provision to be made in connection with the operation of the scheme within the new tolling framework established by the Bill.
144. The principal policy intention is to enable existing charging schemes to transition into the tolling framework established by the Bill. The intention is that, for example, where the powers are exercised in relation to the Lower Thames Crossing, both the LTC and Dartford Crossing should operate under a single licensing and charging framework. These powers will enable a seamless transition at the point of transaction. This means that tolling can continue and any outstanding penalty charges or enforcement action can be dealt with. The intention is that subsequent to this transitional arrangement any new tolling scheme would be made directly under the tolling provisions in the Bill.
145. The power is intended to extend the operation of existing charging schemes under the Transport Act 2000 or the Planning Act 2008 into the new tolling framework established by the Bill, ensuring continuity of charging, enforcement and administration arrangements.

Justification for taking the power

146. It has been considered necessary to take this power because it is intended to extend the effect of existing charging schemes into the new tolling regime created by the Bill. The precise provision required to give effect to that extension will depend on the charging scheme concerned and the circumstances in which the new regime is introduced.
147. The power allows regulations to make the detailed modifications, savings and transitional provision necessary to ensure continuity of charging arrangements during the transition from one statutory regime to another. This includes provision for adapting references, rights, obligations, and enforcement arrangements which currently operate under the Transport Act 2000 or the New Roads and Street Works Act 1991 frameworks so that they function appropriately within the new regime created by the Bill.
148. The Department considers that these are detailed implementation matters which are not suitable for inclusion on the face of the Bill. The flexibility provided by delegated legislation will allow the transition to be tailored to the particular charging scheme concerned and will help ensure that the migration from the existing regime can be undertaken efficiently and without disruption to road users or revenue collection.

Justification for the procedure

149. The power is intended to facilitate the transition of existing charging schemes into the new tolling regime established by the Bill. The regulations will principally make transitional, consequential and technical provision to enable an existing charging scheme to continue operating under the new statutory framework.
150. Parliament has previously accepted that detailed provision relating to the operation, enforcement and modification of road charging schemes may be made through secondary legislation subject to the negative procedure. The Department considers that the same level of scrutiny is appropriate here, particularly as the regulations will not establish new charging powers but will instead facilitate the continuation of an existing charging scheme within the framework established by the Bill. The provision is only ever intended to operate a short-term transitional

arrangement with subsequent tolling schemes to be made under the routine tolling provisions of the Bill.

151. The Department therefore considers that the negative procedure provides a proportionate level of Parliamentary scrutiny for what is primarily a transitional and technical power.

Clause 35: Disputes, appeals and evidence

Power conferred on: Lord Chancellor

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

152. Clause 35 enables the Lord Chancellor to make regulations about the appointment of adjudicators, the determination of disputes relating to qualifying tolls and penalty charges, appeals, the appointment of persons to hear such appeals and the use of evidence in proceedings in respect of tolls, penalty charges, or failure to comply with any other requirements under Part 3 of the Bill.
153. The purpose of the power is to provide the procedural framework necessary for the effective operation of the tolling and enforcement regime established by the Bill. The regulations may make detailed provision about how disputes are determined, the evidential requirements applicable to proceedings, and the appeals against determinations or failure to make such determinations.
154. The Bill establishes the substantive rights, obligations, and enforcement powers relating to tolling under the new regime established in the Bill. The regulations are intended to supplement that framework by providing the procedural and evidential arrangements necessary for those provisions to operate effectively in practice.

Justification for taking the power

155. There is a precedent for such powers, see for example section 195(1) and (2) of the Transport Act 2000, which gives a regulation-making power to the Lord Chancellor to provide for appeals in respect of schemes made under the Transport Act 2000. The operation of dispute resolution processes and evidential requirements often requires detailed technical provision that may need to be updated over time to reflect developments in court procedures, enforcement practices, technology, and operational experience. Delegated legislation provides the flexibility necessary to ensure that those arrangements remain effective and proportionate.
156. The power also enables the tolling regime to operate consistently with wider procedural and evidential frameworks applicable across the courts and tribunals system. The Lord Chancellor is best placed to determine those detailed arrangements and ensure that they continue to reflect developments in the administration of justice.

Justification for the procedure

157. The regulations will concern procedural and evidential matters within the framework established by Parliament in the Bill. The power does not permit the alteration of the substantive rights and obligations relating to tolling, nor does it enable the creation of new categories of liability. Rather, it allows detailed provision to be made about the operation of dispute resolution processes.

158. Given the technical and procedural nature of the provisions that are expected to be made under the power, and the likelihood that those provisions may require updating from time to time to reflect changes in court and tribunal practice, the Department considers that the negative procedure strikes the appropriate balance between Parliamentary scrutiny and operational flexibility.
159. This approach is also consistent with Section 197 of the Transport Act 2000, where similar regulations are subject to the negative procedure.

Clause 38(7): Failure to comply with information notice

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

160. In order to ensure that the ORR is adequately able to monitor the carrying on activities of the licence holder relating to their strategic highway licence, the Bill gives the ORR powers to require information from persons that the ORR reasonably requires for the purposes of carrying out its functions under Part 4.
161. Clause 38(1) provides that where a person fails without reasonable excuse to comply with a notice requiring information under clause 37(3), the ORR may impose a penalty. A penalty may consist of a fixed amount of up to £10 million and/or a daily amount of up to £1 million.
162. Clause 38(7) enables the Secretary of State, by regulations, to replace either of those maximum amounts. The purpose of the power is to ensure that the effectiveness of the enforcement regime is maintained over time, including by enabling the maximum penalties to be adjusted where appropriate so that they do not become outdated or lose their deterrent effect.

Justification for taking the power

163. The ability for the ORR to issue penalties in the event that a person fails to comply with an information notice is an essential part of the enforcement regime in the Bill. The Department considers that it is appropriate to set the maximum penalty amounts in the Bill to incentivise compliance and so licence holders and other parties to the licensing regime are clearly aware of the implications of non-compliance.
164. However, the value of those limits may change over time as a result of inflation, changes in economic conditions or changes in the scale of activities carried out under the licensing regime. The regulation-making power therefore provides a proportionate mechanism for ensuring that the statutory maximums remain effective and continue to provide an appropriate deterrent to non-compliance.
165. There is precedent for monetary limits specified in primary legislation being amended by secondary legislation. See for example section 51(9) of the Civil Aviation Act 2012, which enables the Secretary of State to replace the maximum penalty amounts specified in subsections (4) and (5) by regulations.

Justification for taking the procedure

166. It is the Department's view that the affirmative procedure is appropriate for this power, which is a Henry VIII power to amend primary legislation. This follows the general principle that changes made to primary legislation by secondary legislation should be subject to the affirmative procedure, in order to provide an appropriate degree of Parliamentary scrutiny. It also follows the precedent of a

similar power in section 51(9) of the Civil Aviation Act, to which the affirmative procedure applies (section 73(4) of the Civil Aviation Act).

Clause 54(7): Amount of penalty: fixed amount

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

167. The ORR will be the regulator for the licensing regime created by the Bill. Penalties form a key part of enforcing the licence holder's compliance with licence conditions under the Bill.
168. Clause 54 forms part of the penalty framework established by Part 4 of the Bill. Where the ORR imposes a fixed penalty for a contravention of a licence condition, enforcement order or confirmed urgent enforcement order, the penalty may not exceed 10% of the person's qualifying turnover for the qualifying period.
169. The Bill sets out how qualifying turnover and qualifying period are to be determined, including making provision about how turnover is to be determined by reference to a person's licensed activities and, where relevant, the turnover of connected persons.
170. Clause 54(7) enables the Secretary of State, by regulations, to make provision about the meaning of "qualifying turnover" and about how a person's qualifying turnover for a qualifying period is to be calculated. The purpose of the power is to ensure that the penalty regime continues to operate effectively where changes in accounting practices, corporate structures or commercial arrangements make modification of the turnover calculation methodology necessary.

Justification for taking the power

171. The ability for the ORR to issue penalties in the event of non-compliance with licence conditions, enforcement orders or confirmed urgent enforcement orders is an essential part of the wider enforcement regime.
172. The Department considers that it is appropriate for the detail of how a person's qualifying turnover is to be calculated to be set out in regulations. These provisions are likely to require a level of detail that would be unsuitable for primary legislation. The ability to review and update how turnover should be calculated is important to ensure that the enforcement and penalty regime remains appropriate as the market develops, as regulatory experience is gained and to take account of differing characteristics of future strategic roads projects.
173. This reflects the precedent in section 44(7) and (8) of the Civil Aviation Act 2012. It is also consistent with delegated powers in paragraph 10 of Schedule 3 to the Energy Act 2023, which provide for the Secretary of State to make provision by regulations about how a person's turnover is to be determined.
174. The Department is of the view that it is appropriate for P's "qualifying turnover" to be specified on the face of the Bill so that the basis on which maximum penalties are calculated is clear and transparent for licence holders. The ability to amend the meaning of "qualifying turnover" by regulations is, however, considered necessary to provide sufficient flexibility to ensure that the penalty regime remains effective and continues to operate as intended over time. This follows the precedent in section 44(7)(a) of the Civil Aviation Act 2012, which provides for a similar power in relation to a licensing and enforcement regime where the maximum fixed penalty is linked to a person's qualifying turnover.

Justification for the procedure

175. The Department considers that the affirmative procedure is appropriate because the power includes a Henry VIII power to amend the meaning of qualifying turnover set out in primary legislation. Changes to that meaning could affect the maximum level of financial penalties that may be imposed under the enforcement regime.
176. The affirmative procedure therefore provides an appropriate level of Parliamentary scrutiny for the exercise of the power and gives assurance that any changes to an important aspect of the enforcement and penalty regime will be subject to Parliamentary approval. This follows the precedent in section 73(4) of the Civil Aviation Act 2012, under which regulations made under the equivalent power are subject to the affirmative procedure.

Clause 59: Statement of policy on penalties

Power conferred on: the ORR

Power exercised by: the ORR by publication of the statement

Parliamentary Procedure: None

Context and Purpose

177. Clause 59 requires the ORR to prepare and publish a statement on how it intends to impose penalties and determine their amount under Part 4 of the Bill. Subsection (2) allows the ORR to revisit the statement and revise it as necessary. Any revised statement must be published. Subsection (3) requires the ORR to have regard to the last statement of policy published before an act or omission when imposing or determining the amount of a penalty. Subsection (4) requires the ORR to consult with whomever it considers appropriate before revising a statement or publishing any new statement.
178. Through such a statement of policy, the ORR will be able to articulate clearly to all parties how it intends to impose penalties and the limits it will apply to those amounts. The requirement to consult is expected to be used by the ORR to consult both licence holders and the Secretary of State, but does not impose a restriction on the ORR to reflect any feedback they receive.
179. This is considered to strike the right balance between transparency around penalties while giving the ORR full operational independence, giving it the space to act as an integrated, efficient, and commercially effective regulator for the RAB model. The policy intention is also to allow the detailed justifications that the licence holder and the Secretary of State would expect to see for how the ORR intends to carry out their role in this respect. This power also enables a greater level of clarity for potential investors in a RAB model scheme too, including providing clarity of the expected level of penalties in a manner which is transparent to all.

Justification for taking the power

180. The Bill has been designed to create a flexible framework which can be applied to any RAB model road schemes which are within scope. Allowing for such a statement is necessary and proportionate because:
- a. Without it, the ORR may find have no flex in how they carry out the imposition and setting of penalties. This could be an issue where the current systems or process prove inefficient and could be improved.;

- b. A statement can provide a clear and detailed mechanism to allow the courts to interpret the penalty regime when holding the ORR to account for their actions in relation to penalties imposed on the Licence Holder;
- c. The ability to issue a statement gives the ORR a proportionate and transparent way to provide new processes and new penalty levels without having to resort to new primary legislation or regulation.

There is precedent for this approach in other regulatory sectors. See for example section 58 of the Civil Aviation Act 2012.

Justification for the procedure

181. The Department considers the requirement for the ORR to publish a statement of its policy sufficient to enable scrutiny and transparency. The Department acknowledges the Committee's guidance that "mandatory guidance is a contradiction in terms". Accordingly, the Bill is clear that ORR must "have regard" to the statement they issue, but the statement will not establish binding outputs.
182. The Bill is designed to provide the ORR with the appropriate mechanisms for the court to hold the ORR to account, while preserving its regulatory independence. The ability to issue a statement gives the ORR a proportionate and transparent way of providing its justification for processes and penalty levels in relation to the licence. The need for this power is particularly acute because the RAB model is new to roads so this will be the first time it has been used in this sector. This power will give the Courts the appropriate levers to scrutinise the actions of the ORR while the ORR is afforded the flexibility to react to lessons it may learn in the process of imposing penalties or setting penalty levels.
183. Requiring publication of the statement is consistent with the approach taken in section 58 of the Civil Aviation Act 2012.

Clause 60(2): Reports to Secretary of State

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and purpose

184. Clause 60 requires the ORR to prepare a report every two years setting out what it has done in exercising its functions under Part 4 of the Bill during the reporting period and to send that report to the Secretary of State. Clause 60(2) enables the Secretary of State to direct that a report for a particular reporting period must also cover such other matters as may be specified in a direction given to the ORR. The Secretary of State is required to publish each report received (clause 60(6)).
185. The purpose of the power for the Secretary of State to give a direction is to ensure that the Secretary of State is able to obtain information about additional matters relating to the operation of the regulatory and enforcement regime where this is necessary to support wider government oversight of the licensing framework and the strategic road network. The power enables reporting requirements to remain responsive to changing circumstances and emerging issues without requiring amendment of the primary reporting duty established by the Bill.

Justification for taking the power

186. The Department considers it appropriate for the Secretary of State to have a limited power to specify additional matters that must be covered in a report prepared by the ORR.
187. The Bill establishes the core reporting requirement by requiring the ORR to report on the exercise of its functions under Part 4. However, it is not possible to anticipate all matters that may become relevant during the operation of the regime over time. There may be circumstances in which the Secretary of State requires additional information concerning particular aspects of the ORR's regulatory activities, emerging risks, enforcement trends or issues affecting the effective operation of the licensing framework.
188. The power provides a flexible mechanism for ensuring that reports remain relevant and useful without imposing rigid reporting requirements on the face of the Bill. It also supports the Secretary of State's accountability to Parliament for the overall operation of the regime and the wider strategic road network.
189. The power is narrowly constrained. It does not permit the Secretary of State to alter the ORR's statutory functions, enforcement powers or reporting cycle. Rather, it enables the Secretary of State only to specify additional matters to be included within a report that the ORR is already required to prepare.

Justification for the procedure

190. Directions currently issued by the Secretary of State to the ORR in respect of National Highways are not subject to Parliamentary scrutiny, and there is clear precedent for this approach. For example, the direction-making power in the Infrastructure Act 2015 for National Highways follows the same procedure.
191. The power is administrative and case-specific in nature and is intended to enable the Secretary of State to intervene in exceptional circumstances within the framework established by Parliament in the Bill. Requiring Parliamentary scrutiny of individual directions would not be proportionate and could impede the Secretary of State's ability to act swiftly where necessary. The Secretary of State remains accountable to Parliament for the exercise of the power.

Clause 61(7): Disclosure and publication of information

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

192. Clause 61 makes provision about the disclosure and publication of information obtained by the ORR in connection with the exercise of its functions under Part 4 of the Bill. The ORR may disclose information to facilitate the exercise of its own functions or the functions of another person under or by virtue of an enactment.
193. Clause 61(6) requires the ORR to notify the Secretary of State if it considers that information which it is required to publish under Part 4, or which it proposes to disclose, contains material that may relate to a matter of national security. Clause 61(7) enables the Secretary of State to direct the ORR to exclude from publication or disclosure any material which the Secretary of State considers would be contrary to the interests of national security.
194. The purpose of the power is to ensure that sensitive information relating to national security is not disclosed inadvertently through the operation of the transparency and information-sharing provisions contained in Part 4 of the Bill. The power provides a mechanism through which the Secretary of State may

intervene in exceptional cases where publication or disclosure would be contrary to the interests of national security, while allowing the ORR to continue to exercise its information-sharing and publication functions in the ordinary course.

Justification for taking the power

195. The Department considers it necessary and appropriate for the Secretary of State to have a power to prevent the publication or disclosure of information where this would be contrary to the interests of national security.
196. The Bill establishes a framework under which the ORR may obtain, publish and disclose information in connection with the exercise of its regulatory and enforcement functions. While transparency and information-sharing are important features of the regime, there may be circumstances in which information obtained by the ORR concerns matters affecting national security.
197. National security considerations may involve information that extends beyond matters which are apparent to the ORR when exercising its statutory functions. The Secretary of State is therefore best placed to assess whether publication or disclosure of particular information could be contrary to the interests of national security.
198. Without such a power, there would be a risk that information could be published or disclosed in circumstances where wider national security considerations require that access to the information be restricted. The power provides a clear and proportionate safeguard while remaining narrowly focused on material which the Secretary of State considers should be withheld on national security grounds.

Justification for the procedure

199. The power is administrative and case-specific in nature. It may only be exercised in relation to particular information which the ORR proposes to publish or disclose and does not permit amendment of legislation or the creation of obligations of general application.
200. The power is intended to enable the Secretary of State to act quickly where national security considerations arise. Requiring Parliamentary procedure would not be compatible with the need to respond promptly and effectively to such circumstances.
201. The Department therefore considers that the Secretary of State's accountability to Parliament for matters of national security, together with the narrow scope of the power and its application only in individual cases, provides an appropriate level of scrutiny and accountability.

Clause 70: Highways administration rules

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

202. Clause 70 extends Section 411 of the Insolvency Act 1986 to this Bill to enable the making of procedural rules for the bespoke Special Administration Regime provided for Highways Administration. A Special Administration Regime is required to protect the ongoing use of the road for the user in the event of the licence holder becoming insolvent or facing insolvency.

203. The purpose of the power is to enable the Secretary of State to specify the technical detail of the procedures and rules which will underpin the Special Administration Regime, and where necessary update them, if circumstances require.

Justification for taking the power

204. The Department considers it appropriate for the detailed rules of the Special Administration Regime to be set out in procedural rules. This is consistent with the approach for ordinary administration under Schedule B1 Insolvency Act 1986, for which the procedural rules are currently set out in the Insolvency (England and Wales) Rules 2016 and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018, and other Special Administration Regimes for other sectors. Determining these rules is a technical and potentially complex process relating to Court processes. Following the approach of other Special Administration Regimes, the procedural rules for our Special Administration Regime will be based on the procedural rules for ordinary administration. Insolvency processes also evolve over time. The power therefore provides flexibility to ensure that the procedural rules can adapt as the mainstream procedural rules for ordinary administration are updated and build in any lessons learned from other sectors from their Special Administration Regimes. This allows the rules to remain appropriate and effective in the context of the regime without requiring primary legislation to make technical amendments.
205. The Department considers that the use of regulations is particularly appropriate because the power supports the operation of the highways administration regime by applying existing insolvency rules to it, rather than establishing any new substantive policy.

Justification for the procedure

206. Section 411 of the Insolvency Act 1986 provides for these regulations to be subject to the negative procedure, and by extending them to this Bill, the procedure here would also be negative.
207. The Department considers that the negative procedure provides an appropriate level of Parliamentary scrutiny. The power is limited to making provision about the rules of the Special Administration Regime unique to the Highways Administration Regime, rather than substantive policy matters.
208. The regulations will be technical in nature and are intended to provide flexibility to update or refine the rules in light of changes to wider insolvency practice, the roles of the insolvency courts and lessons learned from other Special Administration Regimes. The Department therefore considers that the negative procedure strikes the appropriate balance between Parliamentary scrutiny and the need to maintain an effective and adaptable regulatory framework. This is consistent with the approach generally taken to technical and interpretative provisions of this nature and is well established by the precedents of other Special Administration Regimes making procedural rules under the aegis of the Insolvency Act 1986.

Clause 76(6): Indemnities

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and purpose

209. Clause 76 makes provision for the Secretary of State to indemnify specified persons in connection with the exercise of the functions of a special administrator appointed under the special administration regime established by Part 5 of the Bill. The indemnity provision allows the special administrator to act without fear of being out of pocket, ensuring that they and those involved are appropriately reimbursed for any liabilities, loss or damage associated with performing the duties of the special administrator. Where the Secretary of State makes payments pursuant to such an indemnity, clause 76(6) provides that the company subject to the highways administration order must repay those sums to the Secretary of State in such amounts and with such interest as the Secretary of State may direct. Clause 76(7) further provides that those payments must be made at such times and in such manner as the Secretary of State may determine.
210. The purpose of the power is to provide flexibility for the Secretary of State to determine appropriate arrangements for recovering public funds where an indemnity has been called upon during a highways administration. The power enables repayment obligations to be tailored to the circumstances of the administration while protecting public funds and supporting the effective operation of the special administration regime.

Justification for taking the power

211. The Department considers it necessary and appropriate for the Secretary of State to have discretion under subsections (6) and (7) to determine the amounts to be repaid and the rate of interest payable where sums have been paid under an indemnity.
212. The circumstances in which an indemnity may be called upon, the amounts involved and the circumstances of the administration concerned are likely to vary significantly from case to case. It would therefore not be practicable to prescribe on the face of the Bill detailed rules governing repayment arrangements applicable in every circumstance. A direction-making power enables repayment arrangements to be determined in a manner which reflects the facts of the individual case.
213. The power also provides flexibility to ensure that public funds can be recovered appropriately where possible while avoiding unnecessary constraints that could undermine the achievement of the objectives of the special administration regime. The Department considers that decisions regarding repayment arrangements are inherently case-specific and administrative in nature and are therefore more appropriately left to the Secretary of State than set out in primary legislation.
214. The power is narrowly drawn. It may only be exercised where the Secretary of State has made payments under an indemnity given under clause 76 and is limited to determining repayment amounts and interest payable in connection with those payments. It does not permit modification of the wider special administration framework established by the Bill.

Justification for the procedure

215. The power applies only in relation to individual cases where the Secretary of State has made payments under an indemnity and is concerned with the recovery of those sums from the company concerned. The exercise of the power is therefore administrative and case-specific in nature and does not involve legislative policy choices or the creation of obligations of general application.
216. The purpose of the power is to enable the Secretary of State to respond flexibly to the circumstances of a particular highways administration and to determine repayment arrangements that are appropriate in light of the facts of the case.

Parliamentary scrutiny of individual directions would not be proportionate given the operational nature of the decisions being made.

217. The Department therefore considers that the Secretary of State's accountability to Parliament for the exercise of functions under the special administration regime, together with the narrow and case-specific nature of the power, provides an appropriate degree of oversight.

Clause 78(4): Disclosure of information in relation to a licence

Power conferred on: Secretary of State

Power exercised by: Publication of a statement of policy

Parliamentary Procedure: None

Context and Purpose

218. Clause 78 makes provision about the disclosure and publication of information relating to licences and applications for licences under the Bill. The Secretary of State and the ORR may disclose information to one another and may publish information relating to a licence or an application for a licence. Where information has been received pursuant to a condition of a licence, any disclosure or publication must comply with any relevant licence conditions.
219. Clause 78(4) requires the Secretary of State to issue a statement of policy relating to the publication of information under the clause. Clause 78(5) enables the Secretary of State to discharge that duty by approving a statement prepared by the ORR. Clause 78(6) requires the Secretary of State and the ORR to have regard to the statement before publishing information under the clause.
220. The purpose of the statement is to provide a transparent and publicly available framework governing the publication of information relating to licences and licence applications. The statement will assist the Secretary of State and the ORR in balancing the benefits of transparency and public accountability with the need to protect commercially sensitive or otherwise confidential information where appropriate. It will also provide greater clarity and certainty for licence holders, investors and other interested parties regarding how information obtained under the regime may be published.

Justification for taking the power

221. The Bill has been designed to create a flexible framework which can be applied to any RAB model road schemes which are within scope. Allowing for such a statement is necessary and proportionate because:
- a. Without it, the ORR may find that they are unclear as to how they should treat certain data provided to them or may misinterpret the policy intention;
 - b. A statement can provide a clear and detailed mechanism to allow the courts to interpret the Bill when holding the ORR to account for their actions in relation to information supplied to the ORR;
 - c. The ability to issue a statement gives the Secretary of State a proportionate and transparent way to influence ORR's information management processes and gives clarity to the licence holder in what they can expect.
222. The Secretary of State remains fully accountable to Parliament for how and when this power is used and the statement must be published. This reinforces the democratic oversight within which the ORR will operate this regime.

Justification for the procedure

223. The Department considers the requirement for the Secretary of State to publish a statement sufficient to enable scrutiny and transparency. The Department acknowledges the Committee's guidance that "mandatory guidance is a contradiction in terms". Accordingly, the Bill is clear that ORR must "have regard" to the statement issued by the Secretary of State, but the statement will not establish binding outputs.
224. The Bill is designed to provide the Secretary of State with the appropriate mechanisms to hold ORR to account while preserving its regulatory independence. The ability to issue a statement gives the Secretary of State a proportionate and transparent way to influence ORR's delivery in disclosing and publishing information. The need for this power is particularly acute because the RAB model is new to roads so this will be the first time it has been used in this sector. This power will give the Secretary of State the appropriate levers to ensure information is dealt with properly and with the public interest in mind, so the ORR continues to deliver in the interests of road users, and the wider public.

Clause 80(6): Disclosure of information obtained under section 79

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

225. Clause 79 enables an appropriate authority (the Secretary of State, the ORR or a strategic highway company) to require the holder of a licence, or a person connected with the holder of a licence, to provide information or documents required by the appropriate authority for the purposes of exercising any of its relevant functions.
226. Clause 80 makes provision about the disclosure of information obtained under clause 79. Clause 80(5) requires an appropriate authority to notify the Secretary of State if it considers that information it proposes to disclose contains material that may relate to a matter of national security. Clause 80(6) enables the Secretary of State to direct the appropriate authority to exclude from information to be disclosed under subsection (1) or (2) any material the disclosure of which the Secretary of State considers would be contrary to the interests of national security.
227. The purpose of the power is to ensure that sensitive information relating to national security is not disclosed through the operation of the information-sharing provisions associated with the licensing regime. The power provides a mechanism through which the Secretary of State may intervene in exceptional cases where disclosure would be contrary to the interests of national security, while otherwise allowing information obtained under clause 79 to be disclosed for the purposes permitted by the Bill.

Justification for taking the power

228. The Bill establishes a framework under which potentially significant operational, financial, technical and commercial information may be obtained from licence holders and persons connected with them. While the ability to share such information may be important to the functioning of the licensing regime, there may be circumstances in which information obtained under the regime has implications for national security.
229. National security considerations may involve information held elsewhere within Government and may extend beyond matters that are apparent to the authority

holding the information. The Secretary of State is therefore best placed to assess whether disclosure of particular information could be contrary to the interests of national security.

230. Without such a power, there would be a risk that information could be disclosed in circumstances where wider national security considerations require that access to the information be restricted. The power provides a clear and proportionate safeguard while remaining narrowly focused on material which the Secretary of State considers should be withheld on national security grounds.

Justification for the procedure

231. The power is administrative and case-specific in nature. It may only be exercised in relation to particular information that would otherwise be disclosed under the statutory framework and does not permit amendment of legislation or the creation of obligations of general application.
232. The power is intended to enable the Secretary of State to act quickly where national security considerations arise. Requiring Parliamentary procedure would not be compatible with the need to respond promptly and effectively to such circumstances.
233. The Department therefore considers that the Secretary of State's accountability to Parliament for matters of national security, together with the narrow scope of the power and its application only in individual cases, provides an appropriate level of scrutiny and accountability.

Clause 81 – Power to direct proposed highway to be a trunk road

Power conferred on: the Minister

Power exercised by: Order

Parliamentary Procedure: None

Context and Purpose

234. Section 10(2) of the Highways Act 1980 requires the Minister to keep under review the national system of routes for through traffic in England and Wales. Where the Minister is satisfied that it is expedient, for the purpose of extending, improving or reorganising that system, the Minister may direct by order that a highway or proposed highway (i) to be constructed by the Minister or a strategic highways company, or (ii) in relation to which the Minister has entered or proposes to enter into an agreement under section 38(3A) of the Highways Act 1980, become a trunk road. No parliamentary procedure attaches to orders made under section 10 of the Highways Act 1980, as they are not required to be made via statutory instrument.
235. Clause 81 amends section 10(2)(a) of the Highways Act 1980 so that the existing power may also be exercised in relation to a proposed highway that is to be constructed pursuant to a licence under clause 3 of the Bill. The amendment does not create a new power to designate trunk roads or alter the statutory tests that apply to the exercise of the power. Rather, it extends the scope of the existing power so that highways delivered under the licensing regime may be incorporated into the trunk road network where appropriate, as an alternative to solely relying on orders granting development consent made under the Planning Act 2008.
236. The purpose of the amendment is to ensure that roads delivered under the new financing and licensing framework can be treated consistently with roads

delivered by other means and can form part of the strategic road network where they fulfil the same national transport function.

Justification for taking the power

237. The decision whether a proposed highway should become a trunk road is inherently project-specific and depends on an assessment of the role that the highway will play within the national system of routes for through traffic. It would not be appropriate or practicable for Parliament to determine in primary legislation which future licensed highways should become trunk roads.
238. The amendment is necessary because section 10(2)(a) of the Highways Act 1980 currently applies to proposed highways constructed by the Minister, a strategic highways company, or pursuant to certain agreements, but does not extend to highways constructed by a licence holder under the Bill. Without this amendment, a highway delivered under the new licensing regime could not be designated as a trunk road or un-designated through the established statutory mechanism under the Highways Act 1980 before construction.
239. The power provides the flexibility necessary to enable future licensed road projects to be integrated into the strategic road network where they satisfy the criteria already established by Parliament. The amendment is narrowly drawn and does not alter the substantive considerations that must be taken into account before an order can be made.

Justification for the procedure

240. The clause brings proposed highways constructed pursuant to a licence within the scope of the existing order-making regime under section 10 of the Highways Act 1980. It does not establish a new parliamentary procedure or modify the existing safeguards applicable to trunk road orders.
241. Orders under section 10 are administrative and project-specific in nature. They apply statutory criteria set out in primary legislation to the circumstances of a particular highway. The existing Highways Act 1980 framework contains procedural safeguards, including requirements relating to publication, objections and, where applicable, inquiries. No parliamentary procedure attaches to orders made under section 10 of the Highways Act 1980, as they are not required to be made via statutory instrument.
242. The Government therefore considers it appropriate that highways delivered under the licensing regime should be subject to the same established procedure as other trunk road designations. Requiring an additional parliamentary procedure would be disproportionate and the amendment merely extends its application to a further category of proposed highway.

Clause 86: Levy payable to ORR

Power conferred on: the ORR

Power exercised by: by the ORR issuing a notice

Parliamentary Procedure: None

Context and Purpose

243. Clause 86(1) allows the ORR, by notice, to require a person who is authorised under or by virtue of the Bill to charge tolls in respect of the use or keeping of road vehicles on a highway to pay a levy to the ORR. The amount of the levy must be such amount as the ORR reasonably expects to incur in carrying out its functions

under or by virtue of the Bill over the charging period. This is for the purpose of covering the costs of the regulatory process associated with the RAB model for roads. This is well-precedented across RAB models in other sectors such as water and energy. The purpose of this clause is to give the ORR an independent and future-proofed funding mechanism. The notices would be individual and are to be reissued by further notice when the ORR needs to revise the amount charged i.e. if it has been overpaid or underpaid.

Justification for taking the power

244. This type of clause is typical to all RAB licence regimes. It is necessary to make such changes over time to reflect the changing costs to the ORR in providing the regulation of the licence, to ensure that levies remain fit for purpose. For example, it is expected in the initial period while the licence holder is constructing the RAB road there may need to be fees to reflect the employment of specialists to satisfy the ORR that construction has been undertaken properly but post-construction, this would be expected to fall away. The Government considers that including the levy in legislation provides a clear statutory mechanism for recovering the costs it incurs in exercising its functions under the Bill. The power to revise levy levels is necessary to ensure that the amount recovered continues to reflect the costs reasonably incurred by the ORR in exercising those functions over time. Section 11 of the Civil Aviation Act 1982 enables the Civil Aviation Authority (CAA) to make a scheme for determining the charges which are to be paid to the CAA and clause 14 of the Railways Bill (as brought from the Commons) takes a similar approach to the ORR charging a levy.

Justification for the procedure

245. It is the Government's intention that notices issued under this power would facilitate the effective implementation of the correct levy level on the licence holder for each project. This is proportionate and in keeping with a similar proposed power for the ORR to issue a levy via a notice in the Railways Bill.

246. The Government believes that exercise of the power is subject to the appropriate levels of transparency and consultation in respect of such a levy. We therefore do not consider Parliamentary procedure appropriate for exercise of this power.

Clauses 87 to 92: Collection and enforcement of tolls

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

247. Clause 87(1) enables the Secretary of State to make regulations concerning the collection and enforcement of tolls charged in respect of the use by road vehicles of a bridge, tunnel or road specified in the regulations. The power allows provision to be made for the administration, collection and enforcement of tolls and permits the integration of existing tolling arrangements into the framework established by the Bill. Clause 88 confers powers to provide for the imposition of penalty charges. Clause 90 confers powers in relation to the examination of a road vehicle and entering a road vehicle, and well as conferring powers to seize and detain items as evidence where necessary. Clause 91 confers powers relating to

the fitting of immobilisation devices and notices, and the removal and release of vehicles.

248. The power is intended to facilitate the application of the Bill's tolling and enforcement framework to specified bridges, tunnels and roads where separate statutory tolling regimes already exist. This will assist in ensuring that toll collection and enforcement arrangements operate consistently and effectively across infrastructure operated under the new licensing and regulatory framework.
249. Clause 87 (read with clause 92) also enables regulations to amend, modify or repeal any existing legislative provisions of an Act (Henry VIII power) relating to tolling in respect of specified bridges or tunnels where this is necessary to give effect to the new arrangements.

Justification for taking the power

250. There are precedents for similar powers, see for example sections 173(1) and (2), 174 and 175 of the Transport Act 2000. The Department considers it appropriate for these matters to be dealt with by regulations because the tolling arrangements currently applying to bridges, tunnels and roads are contained in a variety of legislative instruments and statutory frameworks. The detailed modifications required to align those arrangements with the regime established by the Bill will depend on the particular infrastructure concerned and cannot be fully identified at the time of enactment.
251. The power therefore provides the flexibility necessary to adapt existing tolling regimes and ensure a coherent and consistent framework for the collection and enforcement of tolls. Placing all possible modifications on the face of the Bill would be disproportionate and would risk creating an unnecessarily complex legislative scheme.
252. The power also enables provision to be made in relation to operational and enforcement matters which may need to evolve over time to reflect changes in technology, enforcement practices and future infrastructure projects.

Justification for the procedure

253. Where regulations make technical, administrative or operational provision – like these concerning the collection and enforcement of tolls – the Department considers that the negative procedure provides an appropriate level of Parliamentary scrutiny. This approach ensures that Parliament retains oversight of significant changes to the legislative framework while allowing sufficient flexibility for detailed operational matters to be updated efficiently.
254. While the Department generally considers that the affirmative procedure is appropriate where regulations amend, modify or repeal primary legislation (a Henry VIII power), it is not considered necessary in this case. The changes to primary legislation that would be enabled under clause 92 would be technical and strictly limited to what is needed to make existing tolling powers operate effectively with modern collection and enforcement methods (for example, removing a statement that tolls will be collected before using the bridge or tunnel if drivers will be enabled by these regulations to make payment after travel). The powers to toll and the tolls levied on different classes of vehicle could not be amended by this power. The Department also considers that the detail of how a toll is paid by drivers is not as significant a matter requiring Parliamentary scrutiny as the question of whether a toll is paid and the value of that toll, and so the negative procedure is sufficient in this case.

Clause 94(2): Fees for applications under section 93

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

255. Clause 94(2) allows the Secretary of State to make regulations to determine the fee that may be charged to the applicants under clause 93 who would benefit from the provision of the relevant services under Part 7 of the Bill. The charging of such a fee would allow the Secretary of State to recover the costs they would incur in providing those services in Part 7, on behalf of the public purse.

Justification for taking the power

256. Since the authorities who will benefit from the provision of relevant services under Part 7 can be private entities operating for profit, it is considered reasonable that the Secretary of State may want to charge a fee to recover their costs for making that provision. The reason for managing this through regulations is to allow fee levels to be changed from time to time (for example to reflect inflation) without the need to revisit the primary legislation.

Justification for the procedure

257. The regulations will concern fee levels for dealing with applications under clause 93. The power does not permit the alteration of the substantive rights and obligations relating to tolling, nor does it enable the creation of new categories of liability. Rather, it allows detailed provision to be made about the fees which may be charged by the Secretary of State for the provision of services under Part 7 of the Bill.

258. Given the very detailed and procedural nature of the provisions that are expected to be made under the power, and the likelihood that those provisions may require updating from time to time to reflect changes in costs to the Secretary of State (for example due to inflation), the Department considers that the negative procedure strikes the appropriate balance between Parliamentary scrutiny and operational flexibility.

Clause 95(1): Equipment

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

259. Clause 95(1) provides for the Secretary of State to make regulations that would lay down standards for equipment used in tolling. Clause 95(2) provides that toll operators may not use equipment that fails to comply with those standards. This provision could be used to enable, for example, interoperability of equipment between different toll operations or to protect the interests of road users by ensuring equipment meets at least an acceptable standard.

Justification for taking the power

260. There is a precedent for such powers, see for example section 176(2) of the Transport Act 2000. Technology used for tolling (and operationally similar road user charging schemes) can be expected to continue to develop. It is possible that

in doing so, there could be advantages for road users if equipment used at different locations operates in a consistent or at least interoperable manner. For example, to ensure user familiarity and an acceptable level of performance, and to avoid the duplication of any in-vehicle equipment that may be required.

Justification for the procedure

261. Given the technical and procedural nature of the provisions that are expected to be made under the power, and the likelihood that those provisions may require updating from time to time to reflect the development of tolling technologies, the Department considers that the negative procedure strikes the appropriate balance between Parliamentary scrutiny and operational flexibility.

Clause 96(1) and (2): Disputes, appeals and evidence

Power conferred on: Lord Chancellor

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

262. Clause 96 enables the Lord Chancellor to make regulations about the appointment of adjudicators, the determination of disputes relating to qualifying tolls and penalty charges, appeals, the appointment of persons to hear such appeals and the use of evidence in proceedings in respect of qualifying tolls or penalty charges. This clause is (in effect) a repeat of a clause earlier in the Bill but related to the Wider Tolling changes rather than to the new model established in the Bill.

263. The purpose of the power is to provide the procedural framework necessary for the effective operation of the tolling and enforcement regime established by the Bill. The regulations may make detailed provision about how disputes are determined, the evidential requirements applicable to proceedings and the appeals against determinations or failure to make such determinations.

264. The Bill establishes the substantive rights, obligations and enforcement powers relating to tolling. The regulations are intended to supplement that framework by providing the procedural and evidential arrangements necessary for those provisions to operate effectively in practice.

Justification for taking the power

265. There is a precedent for such powers, see for example sections 195(1) and (2) of the Transport Act 2000. The operation of dispute resolution processes and evidential requirements often requires detailed technical provision that may need to be updated over time to reflect developments in court procedures, enforcement practices, technology and operational experience. Delegated legislation provides the flexibility necessary to ensure that those arrangements remain effective and proportionate.

266. The power also enables the tolling regime to operate consistently with wider procedural and evidential frameworks applicable across the courts and tribunals system. The Lord Chancellor is best placed to determine those detailed arrangements and ensure that they continue to reflect developments in the administration of justice.

Justification for the procedure

267. The regulations will concern procedural and evidential matters within the framework established by Parliament in the Bill. The power does not permit the alteration of the substantive rights and obligations relating to tolling, nor does it enable the creation of new categories of liability. Rather, it allows detailed provision to be made about the operation of dispute resolution processes.
268. Given the technical and procedural nature of the provisions that are expected to be made under the power, and the likelihood that those provisions may require updating from time to time to reflect changes in court and tribunal practice, the Department considers that the negative procedure strikes the appropriate balance between Parliamentary scrutiny and operational flexibility.

Clause 98(4): Interpretation of Act

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

269. Clause 98 contains interpretation provisions for the Bill. As part of those provisions, clause 98(4) confers a power on the Secretary of State to make regulations about when a person is to be regarded as connected with another person for the purposes of the Bill.
270. The concept of connected persons is relevant to a number of provisions in the Bill. In particular, the Bill enables certain information-gathering powers to be exercised in relation not only to a licence holder but also to persons connected with that licence holder, and turnover of connected persons may also be relevant for the purposes of the penalty regime.
271. The purpose of the power is to enable the Secretary of State to specify, and where necessary update, the circumstances in which persons are treated as connected for the purposes of the Bill.

Justification for taking the power

272. The Department considers it appropriate for the detailed rules concerning connected persons to be set out in regulations. Determining whether persons are connected can involve technical and potentially complex questions relating to ownership structures, control arrangements, group companies, partnerships, joint ventures and other commercial relationships. There is also a precedent of such power, see for example section 71(3) of the Civil Aviation Act 2012 and section 40A(3) of the Transport Act 2000.
273. The licensing regime may apply to a range of corporate and financing structures which are likely to evolve over time. The power therefore provides flexibility to ensure that the concept of connected persons remains appropriate and effective in the context of the regime without requiring primary legislation to make technical amendments.
274. The Department considers that the use of regulations is particularly appropriate because the power concerns a technical interpretation provision which supports the operation of the wider regime rather than creating a substantive policy framework in its own right.

Justification for the procedure

275. The Department considers that the negative procedure provides an appropriate level of Parliamentary scrutiny. The power is limited to making

provision about the circumstances in which persons are regarded as connected for the purposes of the Bill and is concerned with the detailed operation of the regime rather than substantive policy matters.

276. The regulations will be technical in nature and are intended to provide flexibility to update or refine the definition in light of changes to corporate structures, business practices or regulatory experience. The Department therefore considers that the negative procedure strikes the appropriate balance between Parliamentary scrutiny and the need to maintain an effective and adaptable regulatory framework. This is consistent with the approach generally taken to technical and interpretative provisions of this nature.

Clause 99(1): Consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative where regulations amend or repeal primary legislation, otherwise negative.

Context and Purpose

277. Clause 99(1) confers a power on the Secretary of State to make provision that is consequential on the Bill by regulations. The power may be used to amend, repeal or revoke existing legislation where this is necessary as a consequence of provisions made by the Bill.
278. The Bill establishes a new framework for the financing, licensing, regulation and operation of strategic road projects delivered using the Regulated Asset Base model. The consequential power is intended to ensure that the wider statute book operates effectively alongside that framework and that any necessary amendments to existing legislation can be made following enactment.

Justification for taking the power

279. The Bill establishes a new regulatory framework for the financing, licensing and oversight of strategic road projects. Given the breadth of the provisions in the Bill and their interaction with existing highways, transport, regulatory and insolvency legislation, it is possible that additional consequential amendments to existing legislation will be required once the Bill is enacted.
280. The Department considers it appropriate for those consequential amendments to be made by regulations rather than requiring further primary legislation. The power provides a proportionate and efficient mechanism for making amendments that are genuinely consequential on the provisions of the Bill and ensuring that legislation operates coherently following implementation of the new regime. There is established precedent for such provisions, including section 19 of the Infrastructure Act 2015 and section 330 of the Energy Act 2023.
281. The Department considers that the power is appropriately limited because it may only be exercised to make provision that is consequential on the Bill. It is not intended to permit substantive policy changes unrelated to the implementation of the Bill.

Justification for the procedure

282. The Department understands the importance of proper Parliamentary scrutiny and we are proposing that any regulations made by the Secretary of State under this clause that amend or repeal primary legislation must be laid before and approved by a resolution of each House of Parliament. This follows the general

principle that changes made to primary legislation by secondary legislation should be subject to the affirmative procedure, in order to provide an appropriate degree of Parliamentary scrutiny.

283. If regulations made under this power do not amend or repeal primary legislation, they will be subject to the negative resolution procedure. It is considered that this gives an adequate level of Parliamentary scrutiny as such regulations would only be making minor, necessary amendments to secondary legislation.

Clause 103(1)(b): Commencement

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: None

Context and Purpose

284. Clause 103(1)(b) contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations.

Justification for taking the power

285. Leaving provisions in the Bill to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, and put the necessary systems and procedures in place, as the case may be.

Justification for the procedure

286. Consistent with common practice, commencement regulations under this clause are not subject to any parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time.

Clause 103(3): Commencement (transitional or saving provision)

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: None

Context and Purpose

287. Clause 103(3) contains a standard power to make transitional or saving provision in connection with the coming into force of any provision of this Bill.

Justification for taking the power

288. The power to make transitional or saving provision is often needed when bringing legislative provisions into force, for example in transitioning between two legislative regimes. The Bill contains a number of interrelated provisions

concerning licensing, regulation, enforcement and administration of the new licensing regime, and it may be necessary to make transitional arrangements to ensure a smooth transition from existing arrangements to the new statutory framework.

289. The Department considers it appropriate for transitional, transitory and saving provision to be made by regulations. It is often not possible to identify in advance all of the detailed arrangements that may be required to ensure the effective implementation of a new legislative regime.
290. The Department considers that this is a standard and necessary power which will assist in ensuring that the Bill is commenced in an orderly and coherent manner.

Justification for taking the procedure

291. The procedure for this power is consistent with that for commencement regulations.

Schedule 1, paragraphs 1 and 5: Transfer Schemes

Power conferred on: Secretary of State

Power exercised by: Transfer Scheme

Parliamentary Procedure: None

Context and Purpose

292. Schedule 1 makes provision for transfer schemes in connection with the implementation of the licensing regime established by the Act. Transfer schemes will enable property, rights and liabilities to be transferred from the Secretary of State or a strategic highways company to a licence holder or prospective licence holder, for the purposes of establishing and operating projects delivered under the Regulated Asset Base model. When a licence is revoked or expires, transfer schemes will also be used to transfer relevant property, rights and liabilities back to the Secretary of State or a strategic highways company, or onto a new licence holder or other appropriate person, as necessary.
293. Paragraph 1 of Schedule 1 sets out the Secretary of State's power to make a transfer scheme, and the kinds of property, rights and liabilities that can be transferred under a scheme (paragraph 1(4)). Paragraph 2 sets out, in detail, the provision that may be made by a scheme. The Secretary of State's power to modify a scheme after it is made is set out in paragraph 5.
294. The purpose of the power to make transfer schemes is to facilitate the transfer of all the assets and associated rights and obligations required to support the operation of the licensing regime and the delivery of licensed road infrastructure projects. The purpose of the modifications power is to ensure that schemes can be modified where necessary for the functionality or efficiency of the scheme, or to ensure that highways authorities can appropriately exercise their functions.

Justification for taking the power

295. The Department considers that the power to make transfer schemes is necessary because the property, rights and liabilities that may need to be transferred under the Act are likely to be complex, varied and project-specific. They may include land interests, contracts, permits, licences, statutory rights and other property arrangements that are subject to a wide range of legal restrictions or procedural requirements.

296. Without provision of this nature, individual transfers could be delayed, complicated or prevented by restrictions that would otherwise require third-party consent, additional legal processes or other administrative steps. This could undermine the efficient operation of the licensing regime and impede the delivery of infrastructure projects intended to be supported by the Act.
297. It would not be practicable for primary legislation to prescribe all of the detailed arrangements required to facilitate each individual transfer. The flexibility provided by transfer schemes will enable transfers to be tailored to the circumstances of particular projects and ensure that they operate effectively.
298. Powers to make and modify transfer schemes are common in legislation establishing new regulatory or operational frameworks. See for example the Energy Act 2023, sections 50-52 and Schedule 4, and the Infrastructure Act 2015, section 15 and Schedule 3. The powers are intended to provide an efficient mechanism for implementing transfers that are necessary to give effect to the policy approved by Parliament.

Justification for the procedure

299. The power is exercised through an individual transfer scheme rather than through legislation of general application. Transfer schemes are administrative mechanisms designed to give effect to the framework established by the Act and to implement specific transfers required in connection with licensed road projects. Consultation with persons affected by a transfer scheme is required before the scheme is made (Schedule 1, paragraph 4).
300. The provisions made under a transfer scheme will be case-specific and operational in nature, relating to the transfer of particular assets, rights and liabilities. The Department therefore considers that Parliamentary scrutiny would not be proportionate in relation to the exercise of this power. This is consistent with the approach in the Energy Act 2023, sections 50-52 and Schedule 4, and the Infrastructure Act 2015, section 15 and Schedule 3, which also did not require Parliamentary scrutiny of transfer schemes.

Schedule 1, paragraph 3: Transfer Schemes – payment of compensation

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

301. Transfer schemes will allow property or assets currently owned by the Secretary of State, including for example roads and associated highway land, to be transferred to another person or persons for the purposes of setting up the Regulated Asset Base.
302. Schedule 1, paragraph 3 provides for compensation for third parties who are adversely affected by transfer schemes. It allows transfer schemes to provide for the payment of compensation by the Secretary of State to any person, other than the transferor or transferee, whose interests are adversely affected by the scheme. Where the person and the Secretary of State cannot agree on the amount of compensation, subparagraph (2)(b) provides that the amount is to be determined by an independent valuer appointed by the Secretary of State. Subparagraph (3) provides that the independent valuer must have regard to any guidance issued by

the Secretary of State in relation to the determination of the amount of compensation payable.

Justification for taking the power

303. The content of guidance issued to independent valuers will be technical and procedural. The content will likely need to be discussed with potential valuers to ensure that the guidance is fit for purpose. The guidance may also need to change over time and at pace, to adapt to different compensation scenarios and reflect normal business practise among independent valuation service providers. Allowing the Secretary of State to update the guidance quickly and over time will ensure that the valuation process remains fair, that it continues to provide good value for money for government, and that it properly reflects how valuers carry out their services.

304. It is not uncommon to take delegated powers to provide for the matters to which an independent valuer must have regard when determining the value of compensation to be provided under transfer schemes: see for example Schedule 9, paragraph 8(4) to the Energy Act 2023. In this case guidance was considered appropriate, rather than regulations, as the matters to be covered were exclusively points to which the independent valuer must have regard when making a valuation. Other mandatory requirements related to the valuation process are, in this case, dealt with on the face of the Bill in paragraph 3 of Schedule 1.

Justification for the procedure

305. Given the technical and procedural nature of the guidance, Government does not think that Parliamentary scrutiny is proportionate. The Government acknowledges the Committee's guidance that "mandatory guidance is a contradiction in terms". Accordingly, the Bill is clear that an independent valuer must "have regard" to guidance issued by the Secretary of State, but the guidance will not establish binding outputs.

Schedule 1, paragraph 6: Transfer Schemes – provision of information

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

306. Schedule 1 enables the Secretary of State to make transfer schemes in connection with the establishment and operation of the licensing regime created by the Act.

307. Paragraph 6 in Schedule 1 gives the Secretary of State powers to request information and documents from prospective and current transferors and transferees, where this is reasonably required in connection with the making or modification of a scheme. Directions must specify a period within which the information or documents are to be provided (paragraph 6(3)). The period may not be less than 28 days (paragraph 6(4)). The Secretary of State has powers to issue notices for non-compliance with directions (paragraph 6(5)). Intentional alteration, suppression or destruction of documents which a person has been directed to produce is an offence under paragraph 6(8).

308. The purpose of the directions power is to ensure that the Secretary of State has all of the information and documents necessary to inform the making and modification of transfer schemes.

Justification for taking the power

309. The Secretary of State will require a wide range of information and documents from transferees and transferors in order to effectively make or modify a transfer scheme. This may include detailed, confidential and/or commercially sensitive information about the transferor and transferee's property, rights and liabilities. The Department considers that this power is necessary to ensure that the Secretary of State can obtain the specific information she requires and compel the provision of information and documents where it is not forthcoming.

310. It is not possible to know in advance what information the Secretary of State will require in each individual case. It would be thus impracticable to include a requirement for the provision of specific information on the face of the Bill. The inclusion of powers for the Secretary of State to direct that the transferor and transferee provide information and documents are well precedented in transfer scheme legislation: see for example the Infrastructure Act 2015, Schedule 3, paragraph 11, and the Energy Act 2023, Schedule 4, paragraph 12.

Justification for the procedure

311. The power is exercised by direction rather than by regulations or other legislative instruments of general application. The Department considers this is appropriate given the power will need to be exercised on a case-by-case basis in respect of individual transferors and transferees.

312. There is no Parliamentary procedure. The Department considers that Parliamentary scrutiny would not be proportionate in relation to individual directions to provide information and documents. Neither the Infrastructure Act 2015, Schedule 3 paragraph 11, nor the Energy Act 2023, Schedule 4 paragraph 12, provide for a Parliamentary procedure.

Schedule 1, paragraph 7: Transfer Schemes - taxation

Power conferred on: His Majesty's Treasury (HMT)

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

313. The purpose of a transfer scheme is to allow property or assets currently owned by the Secretary of State, including for example roads and associated highway land, to be transferred to another person or persons for the purposes of setting up the Regulated Asset Base. The Bill includes powers for these transfers to be effected by transfer schemes made by the Secretary of State. Such transfer schemes may result in tax liabilities on the Secretary of State (as potential transferee under the scheme) or on other parties to the transfer scheme, or on those who are otherwise affected by the transfer scheme.

314. Schedule 1, paragraph 7 includes a power for HMT to make regulations to vary the tax due as part of a transfer scheme. This could include, but is not limited to, such taxes as corporation tax, capital gains tax or stamp duty. It may be appropriate to vary how such tax liabilities apply, to ensure value for money for

Government, allow the most efficient structure to be adopted for the transfer, and protect against inadvertent imposition of tax liabilities on persons who are not best placed to take on the burden of those liabilities.

Justification for taking the power

315. The variation of how relevant tax applies will need to be adapted to the actual scheme or schemes which may be made under the transfer scheme powers set out in the Bill. It would not be appropriate to put the tax variation on the face of the Bill before it has become apparent how the transfers are likely to be structured and what tax issues may arise. It may also be necessary for the HMT to amend the variation over time.
316. It is not uncommon for variations to tax liabilities to be drafted by way of power for HMT, as here. Examples include section 16 of the Infrastructure Act 2015, paragraph 4 of Schedule 5 to the Investigatory Powers Act 2016 and section 25 of the Public Bodies Act 2011.

Justification for the procedure

317. The Government considers that the negative resolution procedure is appropriate, given that HMT will be well placed to determine the technical details and policy drivers of what taxes should apply to the relevant transfers. The resulting regulations would most likely be technical and focused on internal government administration and is unlikely to justify significant parliamentary scrutiny.

Schedule 2, paragraph 1: Conduct of highways administration – application and general modifications of Schedule B1 to the Insolvency Act 1986

Power conferred on: Secretary of State

Power exercised by: Order

Parliamentary procedure: Negative

Context and purpose

318. Paragraph 1(1) of Schedule 2 applies paragraph 110 of Schedule B1 1986 to our highways administration regime without amendment. Paragraph 110 in Schedule B1 allows the Secretary of State to, by order, amend a provision of Schedule B1 Insolvency Act 1986 which: (1) Requires anything to be done within a specified period (2) Prevents anything from being done after a specified time, or (3) Requires a specified minimum notice to be given. This is to allow for greater flexibility should a different approach for such requirements be deemed appropriate in future.

Justification for taking the power

319. The power is intended to give the Secretary of State greater flexibility to modify these requirements if deemed appropriate in the future.

Justification for the procedure

320. Given the limited scope of this power, the Department considers that the use of the negative procedure is appropriate. This is line with the precedent power in paragraph 110 Insolvency Act 1986, and other special administration regimes such as the Energy Act 2004 which also applies this power unmodified for its regime.

Schedule 2, paragraph 18: Conduct of highways administration – application and general modifications of Schedule B1 to the Insolvency Act 1986

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary procedure: None

Context and Purpose

321. Schedule 2 applies and modifies provisions of Schedule B1 to the Insolvency Act 1986 for the purposes of the highways administration regime. Paragraph 18 of Schedule 1 modifies how paragraph 84 of Schedule B1 to the Insolvency Act 1986 should apply in respect of our highways administration regime.
322. In Schedule B1, paragraph 84 allows for the administrator to move the company from administration to dissolution. Under the usual provision, if the administrator thinks that a company has no property which might permit a distribution to creditors, then they should send a notice to this effect to the registrar of companies. The registrar of companies will then register the notice, upon which the administration will cease to have effect, and 3 months after the date of registration of the notice, the company will be deemed dissolved. Under our modified provision, instead of the administrator sending notice straight to the registrar of companies, this is required to be sent to the Secretary of State, and only if the Secretary of State directs it, to the registrar of companies.

Justification for taking the power

323. Schedule B1 to the Insolvency Act 1986 contains numerous technical and administrative steps that need to be completed as a company progresses through the insolvency process. It would not be practical for the Secretary of State to shadow the process fully as a highways administration is underway. Allowing for the Secretary of State to be notified at key moments, via making them a step before the court proceeds with an action, ensures that the Secretary of State is kept properly informed of the progress of a highways administration and allows them to step in to the process if they need to do so. The power being formulated this way provides flexibility to the Secretary of State to act on a case-by-case basis.
324. The power is narrowly focused on enabling the Secretary of State to direct if a notice needs to be sent, to the registrar of companies.

Justification for the procedure

325. The power is administrative and case-specific in nature and is intended to enable the Secretary of State to take action within the framework established by Parliament in the Bill. Requiring Parliamentary scrutiny of individual directions would not be proportionate and could impede the Secretary of State's ability to act swiftly where necessary. The Secretary of State remains accountable to Parliament for the exercise of the power.

Schedule 2, paragraph 31: Conduct of highways administration - further Schedule B1 modifications for non-GB companies

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

326. Paragraph 31 of Schedule 2 makes provision for the application of the highways administration regime to licence holders that are incorporated outside Great Britain. Schedule 2 applies and modifies provisions of Schedule B1 to the Insolvency Act 1986 for the purposes of the highways administration regime. While the modifications in Part 2 of the Schedule are designed to apply for companies incorporated in Great Britain (GB), additional provision may be required where a licence holder is incorporated in another jurisdiction.
327. Schedule 2, paragraph 31 therefore enables the Secretary of State, by regulations, to make further modifications to the applied insolvency provisions to ensure that the highways administration regime operates effectively in relation to non-GB companies. The regulations may also modify the provisions in paragraphs 33-38 of Schedule 2, which contain specific adjustments relating to the application of the regime to overseas-incorporated companies.

Justification for taking the power

328. The insolvency and corporate law arrangements applicable to non-GB companies may vary depending on the jurisdiction in which the company is incorporated. It is not possible to anticipate in primary legislation all circumstances in which further modifications to the applied insolvency framework may be required.
329. The power provides the flexibility needed to ensure that the highways administration regime can operate effectively where a licence holder is incorporated outside GB, while remaining capable of accommodating changes in relevant insolvency law and differing overseas corporate structures. The power narrowly focuses on adapting the application of the specified insolvency provisions to overseas-incorporated companies and does not permit amendment of the substantive objectives of the highways administration regime.

Justification for the procedure

330. Regulations under paragraph 31 may only modify the application of the specified provisions of Schedule B1 of the Insolvency Act 1986, which have been adopted and modified by Schedule 2 to the Bill, and paragraphs 33 to 38 of Schedule 2. Those modifications may have effect only in relation to non-GB companies.
331. Given the limited nature of this power, the Department considers that the negative procedure is appropriate and notes that this would be in keeping with a precedent for this power in paragraph 33 of Schedule 20 to the Energy Act 2004, which was also adopted and applied by section 44 of the Energy Act 2023.

Schedule 2, paragraph 40: Conduct of highways administration - other modifications

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

332. This power enables the Secretary of State to apply and modify insolvency legislation in relation to the highways administration regime established in the Bill.

Insolvency legislation is principally designed to govern ordinary insolvency procedures and does not automatically accommodate sector-specific special administration regimes. The power ensures that interactions between the highways administration regime and general insolvency law can be addressed in a coherent and consistent manner.

333. Schedule 2, paragraph 40 enables provision to be made both for insolvency legislation to apply to the regime and for modifications to be made where necessary. This includes consequential changes to the highways administration provisions of the Bill, where required, to ensure that the regime operates as intended.

Justification for taking the power

334. The Insolvency Act 1986 contains numerous references, procedures and legal effects which may require adaptation when applied to a special administration regime created by new primary legislation. It would not be practicable to identify exhaustively on the face of the Bill every provision of insolvency legislation that may need to be applied, disapplied or modified, particularly given the highly technical and interconnected nature of insolvency law.
335. The power is therefore limited to ensuring the effective operation of the highways administration regime established in the Bill, and to addressing interactions between that regime and existing insolvency legislation.

Justification for the procedure

336. Regulations under Schedule 2, paragraph 40 are subject to the affirmative procedure because they may make significant modifications to the application of insolvency legislation in relation to the highways administration regime established in the Bill.
337. The affirmative procedure is considered to provide an appropriate level of Parliamentary oversight while retaining the flexibility needed to make detailed and technical provision governing the interaction between the highways administration regime and insolvency legislation. The affirmative procedure ensures that both Houses have the opportunity to consider and approve any regulations before they come into force.

Schedule 3, paragraph 2: Making of highways administration transfer schemes

Power conferred on: Special administrator

Power exercised by: Transfer Scheme

Parliamentary Procedure: None

Context and Purpose

338. Schedule 3 makes provision for transfer schemes in connection with the implementation of the special administration regime established by the Act. Transfer schemes will enable property, rights and liabilities to be transferred from the company, to which the highways administration order relates, to a person who holds or is to hold a licence, a strategic highways company, the Secretary of State or to any other person considered by the special administrator to be appropriate.
339. Paragraph 2 of Schedule 3 sets out the special administrator's power to make a transfer scheme. Paragraph 3 sets out the kinds of property, rights and liabilities that can be transferred under a scheme and paragraph 4 sets out, in detail, the provision that may be made by a scheme. Those provisions closely follow their equivalents in Schedule 1.

340. The purpose of the power to make transfer schemes is to facilitate the transfer of all the assets and associated rights and obligations required to support the operation of the licensing regime and the delivery of licensed road infrastructure projects.

Justification for taking the power

341. As for transfer schemes under Schedule 1, the Department considers that the power to make transfer schemes is necessary because the property, rights and liabilities that may need to be transferred under the Act, in the context of a highways administration, are likely to be complex, varied and project-specific. They may include land interests, contracts, permits, licences, statutory rights and other property arrangements that are subject to a wide range of legal restrictions or procedural requirements.
342. Without provision of this nature, individual transfers could be delayed, complicated or prevented by restrictions that would otherwise require third-party consent, additional legal processes or other administrative steps. This could undermine the efficient operation of the licensing regime and impede the delivery of infrastructure projects intended to be supported by the Act.
343. It would not be practicable for primary legislation to prescribe all of the detailed arrangements required to facilitate each individual transfer. The flexibility provided by transfer schemes will enable transfers to be tailored to the circumstances of particular projects and ensure that they operate effectively.
344. Powers to make and modify transfer schemes are common in legislation establishing new regulatory or operational frameworks and which contain a special administration regime. See for example Schedule 21 to the Energy Act 2004 (which was also applied by section 44 of the Energy Act 2023) and Schedule 2 to the Technical and Further Education Act 2017. The powers are intended to provide an efficient mechanism for implementing transfers that are necessary to give effect to the policy approved by Parliament.

Justification for the procedure

345. The power is exercised through an individual transfer scheme rather than through legislation of general application. Transfer schemes are administrative mechanisms designed to give effect to the framework established by the Act and to implement specific transfers required in connection with licensed road projects. Procedural requirements do however apply: consultation with persons affected by a transfer scheme is required before the scheme is made (Schedule 3, paragraph 7); the scheme requires approval from the Secretary of State; and the scheme only takes effect at a time appointed by a court (Schedule 3, paragraph 2(3) to (7)).
346. The provisions made under a transfer scheme will be case-specific and operational in nature, relating to the transfer of particular assets, rights and liabilities. The Department therefore considers that Parliamentary scrutiny would not be proportionate in relation to the exercise of this power. This is consistent with the approach in the legislative precedents set out above, which also did not require Parliamentary scrutiny of transfer schemes.

Schedule 3, paragraph 6: Transfer Schemes – payment of compensation

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

347. Transfer schemes under Schedule 3 will allow the transfer of property, rights or liabilities from the company, to which a highways administration order relates, to a person who holds or is to hold a licence, a strategic highways company, the Secretary of State or to any other person considered by the special administrator to be appropriate.
348. Schedule 3, paragraph 6 provides for compensation for third parties who are adversely affected by transfer schemes. It allows transfer schemes to provide for the payment of compensation by the Secretary of State to any person, other than the transferor or transferee, whose interests are adversely affected by the scheme. Where the person and the Secretary of State cannot agree on the amount of compensation, subparagraph (3)(b) provides that the amount is to be determined by an independent valuer appointed by the Secretary of State. Subparagraph (4) provides that the independent valuer must have regard to any guidance issued by the Secretary of State in relation to the determination of the amount of compensation payable.

Justification for taking the power

349. The content of guidance issued to independent valuers will be technical and procedural. The content will likely need to be discussed with potential valuers to ensure that the guidance is fit for purpose. The guidance may also need to change over time and at pace, to adapt to different compensation scenarios and reflect normal business practise among independent valuation service providers. Allowing the Secretary of State to update the guidance quickly and over time will ensure that the valuation process remains fair, that it continues to provide good value for money for government, and that it properly reflects how valuers carry out their services.
350. It is not uncommon to take delegated powers to provide for the matters to which an independent valuer must have regard when determining the value of compensation to be provided under transfer schemes: see for example Schedule 9, paragraph 8(4) to the Energy Act 2023. In this case guidance was considered appropriate, rather than regulations, as the matters to be covered were exclusively points to which the independent valuer must have regard when making a valuation. Other mandatory requirements related to the valuation process are, in this case, dealt with on the face of the Bill in paragraph 6 of Schedule 3.

Justification for the procedure

351. Given the technical and procedural nature of the guidance, Government does not think that Parliamentary scrutiny is proportionate. The Government acknowledges the Committee's guidance that "mandatory guidance is a contradiction in terms". Accordingly, the Bill is clear that an independent valuer must "have regard" to guidance issued by the Secretary of State, but the guidance will not establish binding outputs.

Schedule 3, paragraph 8: Transfer Schemes – modification

Power conferred on: Secretary of State

Power exercised by: Transfer schemes

Parliamentary Procedure: None

Context and Purpose

352. Transfer schemes under Schedule 3 will allow the transfer of property, rights or liabilities from the company, to which a highways administration order relates, to a person who holds or is to hold a licence, a strategic highways company, the Secretary of State or to any other person considered by the special administrator to be appropriate.
353. Schedule 3, paragraph 8(2) enables the Secretary of State to modify a highways administration transfer scheme if the Secretary of State considers the modification is needed to facilitate the exercise by a highway authority of any of its functions in relation to anything transferred by the scheme.

Justification for taking the power

354. The purpose of the modifications power is to protect the ability of highways authorities to appropriately exercise their functions and ensure that transfer schemes can be modified where necessary, where the effect of a scheme may impinge on those functions. This flexibility is required to ensure that any issues arising after a transfer scheme is made can be satisfactorily resolved.

Justification for procedure

355. As explained above, transfer schemes are administrative mechanisms designed to give effect to the framework established by the Act and to implement specific transfers required in connection with licensed road projects. The provisions made under a transfer scheme will be case-specific and operational in nature, relating to the transfer of particular assets, rights and liabilities. The Department therefore considers that Parliamentary scrutiny would not be proportionate in relation to the exercise of this power. In respect of precedents, this is consistent with the approach in the Energy Act 2004, Schedule 21, paragraph 9 (which was also applied by the Energy Act 2023, section 44), and the Energy Act 2023, Schedule 4, paragraph 9 and the Infrastructure Act 2015, Schedule 3, paragraph 8, which also did not require Parliamentary scrutiny of modifications to transfer schemes.

Schedule 3, paragraph 9: Transfer Schemes – provision of information

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

356. Transfer schemes under Schedule 3 will allow the transfer of property, rights or liabilities from the company, to which a highways administration order relates, to a person who holds or is to hold a licence, a strategic highways company, the Secretary of State or to any other person considered by the special administrator to be appropriate.
357. Paragraph 9(1) in Schedule 3 gives the Secretary of State powers to request information and documents from the special administrator and prospective transferees, where this is reasonably required in connection with the approval of a scheme. The Secretary of State, at the request of the special administrator, may

direct a prospective transferee to provide the special administrator with information or documents that they reasonably require in connection with the making of the scheme (paragraph 9(3)). The Secretary of State also has powers to request information and documents from transferors and transferees where this is reasonably required in connection with modification of the scheme.

358. Directions must specify a period within which the information or documents are to be provided (paragraph 9(5)). The period may not be less than 28 days (paragraph 9(6)). The Secretary of State has powers to issue notices for non-compliance with directions (paragraph 9(7)). Intentional alteration, suppression or destruction of documents which a person has been directed to produce is an offence under paragraph 9(11).

359. The purpose of the directions power is to ensure that the Secretary of State has all of the information and documents necessary to inform the approval, making and modification of transfer schemes.

Justification for taking the power

360. The Secretary of State will require a wide range of information and documents from transferees and transferors in order to decide whether a transfer scheme should be approved, made or modified. This may include detailed, confidential and/or commercially sensitive information about the transferor and transferee's property, rights and liabilities. The Department considers that this power is necessary to ensure that the Secretary of State can obtain the specific information she requires and compel the provision of information and documents where it is not forthcoming.

361. It is not possible to know in advance what information the Secretary of State will require in each individual case. It would be thus impracticable to include a requirement for the provision of specific information on the face of the Bill. The inclusion of powers for the Secretary of State to direct that the special administrator and transferee provide information and documents are well precedented in transfer scheme legislation: see for example the Infrastructure Act 2015, Schedule 3, paragraph 11, and the Energy Act 2023, Schedule 4, paragraph 12.

Justification for the procedure

362. The power is exercised by direction rather than by regulations or other legislative instruments of general application. The Department considers this is appropriate given the power will need to be exercised on a case-by-case basis in respect of individual transferors and transferees.

363. There is no Parliamentary procedure. The Department considers that Parliamentary scrutiny would not be proportionate in relation to individual directions to provide information and documents. Neither the Infrastructure Act 2015, Schedule 3 paragraph 11, nor the Energy Act 2023, Schedule 4 paragraph 12, provide for a Parliamentary procedure.

Schedule 3, paragraph 13: Transfer schemes - taxation

Power conferred on: His Majesty's Treasury (HMT)

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

364. Transfer schemes under Schedule 3 will allow the transfer of property, rights or liabilities from a company, to which a highways administration order relates, to a person who holds or is to hold a licence, a strategic highways company, the Secretary of State or to any other person considered by the special administrator to be appropriate. The Bill includes powers for these transfers to be effected by transfer schemes made by the special administrator. Such transfer schemes may result in tax liabilities on the company to which a highways administration order relates (as potential transferee under the scheme) or on other parties to the transfer scheme, or on those who are otherwise affected by the transfer scheme.
365. Schedule 3, paragraph 13 includes a power for HMT to make regulations to vary the tax due as part of a transfer scheme. This could include, but is not limited to, such taxes as corporation tax, capital gains tax or stamp duty. It may be appropriate to vary how such tax liabilities apply, to ensure value for money for Government, allow the most efficient structure to be adopted for the transfer, and protect against inadvertent imposition of tax liabilities on persons who are not best placed to take on the burden of those liabilities.

Justification for taking the power

366. The variation of how relevant tax applies will need to be adapted to the actual scheme or schemes which may be made under the transfer scheme powers set out in the Bill. It would not be appropriate to put the tax variation on the face of the Bill before it has become apparent how the transfers are likely to be structured and what tax issues may arise. It may also be necessary for the HMT to amend the variation over time.
367. It is not uncommon for variations to tax liabilities to be drafted by way of power for HMT, as here. Examples include section 16 of the Infrastructure Act 2015, paragraph 4 of Schedule 5 to the Investigatory Powers Act 2016 and section 25 of the Public Bodies Act 2011.

Justification for the procedure

368. The Government considers that the negative resolution procedure is appropriate, given that HMT will be well placed to determine the technical details and policy drivers of what taxes should apply to the relevant transfers. The resulting regulations would most likely be technical and focused on internal government administration and is unlikely to justify significant parliamentary scrutiny.