EXPLANATORY NOTES

Constitutional Reform and Governance Act 2010

Chapter 25

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These notes refer to the Constitutional Reform and Governance Act 2010 (c. 25) which received Royal Assent on 8th April 2010

CONSTITUTIONAL REFORM AND GOVERNANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Constitutional Reform and Governance Act 2010 which received Royal Assent on 8th April 2010. They have been prepared by the Ministry of Justice, in conjunction with the Cabinet Office, the Foreign and Commonwealth Office and HM Treasury. These notes have been prepared in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE ACT

3. The Constitutional Reform and Governance Act 2010 comprises seven Parts and seven Schedules. The explanatory notes are divided into seven Parts, reflecting the structure of the Act. A summary of, and background to, each Part of the Act is provided below. Commentary on each Part is then set out in section order, with the commentary on each Schedule following the section which introduces it.

SUMMARY

4. A summary of the Act is set out below.

Part 1: The Civil Service

5. Part 1 of the Act provides for:
   - A power for the Minister for the Civil Service to manage the civil service, and a parallel power for the Secretary of State in relation to the diplomatic service;
   - A requirement for a code of conduct for civil servants which specifically requires civil servants to carry out their duties in accordance with the core civil service values of integrity, honesty, objectivity and impartiality;
   - The establishment of a Civil Service Commission with functions in relation to selections for appointments to the civil service and in relation to hearing complaints that the civil service and diplomatic service codes have been breached;
   - A requirement for appointments to the civil service to be made on merit on the basis of fair and open competition;
   - Requirements as to the appointments of Special Advisers. The appointments are to be exempt from the fair and open competition principle;
   - A requirement for a separate code of conduct for special advisers which provides that special advisers may not authorise the expenditure of public funds, exercise

any power in relation to the management of any part of the civil service (except in relation to other special advisers) or otherwise exercise any statutory or prerogative power.

6. The new statutory Civil Service Commission will take on the functions of the existing Civil Service Commissioners. The Civil Service Commission will publish principles on the application of the fundamental requirement that selections for appointment are made on merit on the basis of fair and open competition, and will investigate complaints under the code of conduct for civil servants. The First Civil Service Commissioner and the other Civil Service Commissioners will be the members of the new Civil Service Commission. Transitional arrangements will enable those serving as Civil Service Commissioners automatically to move across to the new commission when it becomes operational.

7. Whilst the Act removes the prerogative powers for the management of the Civil Service, the prerogative will be retained in relation to security vetting and the management of the parts of the Civil Service of the State (listed in section 1) which are not covered by the provisions in Part 1.

Part 2: Ratification of Treaties

8. Part 2 of this Act puts Parliamentary scrutiny of treaty ratification on a statutory footing and gives legal effect to a resolution of the House of Commons or Lords that a treaty should not be ratified. This means that should the House of Commons take the view that the Government should not proceed to ratify a treaty, it can resolve against ratification and thus make it unlawful for the Government to ratify the treaty. The House of Lords will not be able to prevent the Government from ratifying a treaty, but if they resolve against ratification the Government will have to produce a further explanatory statement explaining its belief that the agreement should be ratified. Part 2 concerns scrutiny of the ratification of agreements entered into by the Government under international law. It does not change the current position that an Act of Parliament would be required if it were intended to give effect in domestic law to matters embodied in such an agreement.

Part 3: Parliamentary Standards etc

9. Part 3 of the Act amends the Parliamentary Standards Act 2009 ("the 2009 Act") and makes provision for the Independent Parliamentary Standards Authority ("the IPSA") to make a scheme providing for the payment of resettlement grants for Members of the European Parliament who have opted-out of the common arrangements under the single Statute for MEPs which came into effect on 14 July 2009 ("opted-out MEPs"). It also makes provision for IPSA to make a MPs' pension scheme and to make a scheme dealing with the administration and management of the Parliamentary Contributory Pension Fund, and for the Minister for the Civil Service to make a pension scheme in relation to Ministers and certain other office holders.

10. The amendments to the 2009 Act provide for:
    - the appointment by the IPSA of a Compliance Officer for the Independent Parliamentary Standards Authority ("the Compliance Officer") to police the MPs' expenses regime;
    - the abolition of the office of Commissioner for Parliamentary Investigations;
    - a review by the Compliance Officer of a refusal by the IPSA to pay the whole or part of an MP's expenses claim;
    - the investigatory and enforcement powers of the Compliance Officer in relation to suspected and proven overpayments of MPs' expenses;
    - MPs' rights of appeal to the First-tier Tribunal against the decisions of the Compliance Officer;
    - the abolition of the IPSA's functions in relation to MPs' financial interests;
    - the IPSA to be under certain duties to promote efficiency, cost-effectiveness and transparency in the way it discharges its functions;
    - the IPSA to determine MPs' pay;
    - the duty on the IPSA to pay MPs' salaries and allowances to be subject to the exercise of the disciplinary powers of the House of Commons in relation to an individual MP;
    - the extension of the membership of the Speaker's Committee for the Independent Parliamentary Standards Authority to include three lay members; and
    - the repeal of the sunset provisions in section 15 of the 2009 Act.

Part 4: Tax status of MPs and members of the House of Lords

11. Part 4 of the Act provides that Members of Parliament and most members of the House of Lords are to be deemed to be resident, ordinarily resident and domiciled ("ROD") in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax. As a result, MPs and Lords will be liable to pay these taxes in the UK on their worldwide income, gains and assets regardless of their actual status in the UK, and will be unable to access the remittance basis of taxation.

12. The deemed status will start from the tax year 2010-2011, and will apply to individuals in whole tax years (including where an individual is a member only for part of a tax year). The deemed status will apply to MPs once they have taken the oath of allegiance, at the start of the new Parliament in 2010. It will apply to members of the House of Lords, with the exception of the Lords Spiritual and those temporarily disqualified from sitting in the House by virtue of being an MEP or a judge, following a three month transitional period. During the transitional period members of the House of Lords will be able to state that they do not wish to be subject to the deemed status and leave the House without the deemed status applying to them. Members who leave the House of Lords under this Part will remain disqualified from being, or being elected as, a member of the House of Commons for three years beginning with the date on which they give notice that they do not wish to be subject to the deemed status. Those who remain members at the end of the three month transitional period will automatically be deemed ROD from the start of the 2010-11 tax year.

Part 5: Transparency of Government Financial Reporting to Parliament

13. Part 5 of the Act contains two sections. *Section 43* amends the Government Resources and Accounts Act 2000 ("the GRAA 2000") in order to allow the Treasury to issue directions about the way departments prepare Supply Estimates and to direct that such Estimates are to include information relating to "designated bodies". It also includes provision preventing the designation of a body if it is funded solely from the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund and makes consequential amendments to the GRAA 2000. *Section 44* amends the Government of Wales Act 2006 to make corresponding provision in relation to Wales.

Part 6: Public Records and Freedom of Information

15. Part 6 of the Act amends the Public Records Act 1958 and the Freedom of Information Act 2000. The period within which certain public records must be transferred to the Public Record Office or other places of deposit is reduced from 30 years to 20 years. In parallel, a number of exemptions from the obligations to disclose information under the Freedom of Information Act will cease to apply after 20 years rather than 30 years. Part 6 also strengthens the exemption from disclosure under the Freedom of Information Act for information relating to communications with the Royal Family and Royal Household.

Part 7: Miscellaneous and Final Provisions

Section 47: section 3 of the Act of Settlement

16. *Section 47* of the Act concerns modifications made to section 3 of the Act of Settlement by the Electoral Administration Act 2006 for the purposes of eligibility to sit in the House of Commons. *Section 47* removes any uncertainty about broader effects of this modification.

Section 48: Parliamentary elections: counting of votes

17. *Section 48* places a duty on returning officers to take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within four hours of the close of the poll in parliamentary elections (polling closes at 10pm). The provision applies in both general elections and by-elections, and imposes a duty on returning officers to publish and return to the Electoral Commission a statement in the event that they are not able to begin the count within the specified time.

BACKGROUND

18. Some of the provisions contained within the Constitutional Reform and Governance Act 2010 stem from *The Governance of Britain* Green Paper (Cm 7170) published on 3 July 2007. This document can be found at:

www.official-documents.gov.uk/document/cm71/7170/7170.pdf

19. This Green Paper set out the Government's proposals for constitutional renewal. It stated that those goals were:
    - to invigorate our democracy;
    - to clarify the role of Government, both central and local;
    - to rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account; and
    - to work with the British people to achieve a stronger sense of what it means to be British.

20. The Green Paper proposed that the power to make key decisions that affect the whole country, such as whether to ratify treaties, should not stem solely from the Royal prerogative, but rest on a more formal footing, with Parliament playing a key role in determining the exercise of the power. Similarly, the Government proposed that the governance of the Civil Service, also based on the Royal prerogative, and the fundamental values of the Civil Service – impartiality, integrity, honesty and objectivity – should be set out in statute.

21. Following the publication of the Green Paper, the Government published a number of consultation documents on particular policies. These are referred to where relevant in the background to each separate Part of the Act.

22. In March 2008, the Government published a draft Constitutional Renewal Bill. This can be found at:

    www.official-documents.gov.uk/document/cm73/7342/7342_ii.pdf

23. It contained draft provision in relation to:
    - Demonstrations in the vicinity of Parliament;
    - the Attorney General and prosecutions;
    - Courts and tribunals;
    - Ratification of treaties; and
    - the civil service.

24. The draft Bill was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The Joint Committee reported in July 2008 and its report (HL Paper 166 and HC Paper 551) can be found at:

    www.publications.parliament.uk/pa/jt200708/jtselect/jtconren/166/166.pdf

25. In addition, the Justice Committee of the House of Commons held an enquiry into the provisions relating to the Attorney General. Its report (Fourth Report of the 2007-8 Session, HC 698) can be found at:

    www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698/69802.htm

26. The Public Administration Committee of the House of Commons also held an enquiry which largely focused on the Civil Service provisions of the draft Bill, although it did also consider the proposals on Treaties. Its report (Tenth Report of the 2007-8 Session, HC 499) can be found at:

www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/499/49902.htm

27. The Constitutional Reform and Governance Act 2010 contains provisions on:
- The civil service;
- Ratification of treaties;
- Parliamentary standards etc.;
- The tax status of MPs and members of the House of Lords;
- Transparency of Government financial reporting to Parliament;
- Public records and freedom of information;
- Section 3 of the Act of Settlement; and
- Counting of votes at parliamentary elections.

28. The following paragraphs provide background on each Part of the Act.

Part 1 Background - The civil service

29. The basis of the civil service as we know it today dates back to the Northcote-Trevelyan Report of 1854. The report set out the enduring core values and key principles that underpin the role and governance of the civil service – integrity, honesty, impartiality and objectivity. The report also recommended that these values and principles should be enshrined in legislation. However, no Government ever took forward this recommendation. Instead, over the last 150 years or so, Ministers have exercised powers in relation to the civil service under the Royal prerogative.

30. In recent years, the merits of civil service legislation have been the subject of considerable debate, and there have been growing calls to implement the Northcote-Trevelyan recommendations and bring forward legislation relating to the civil service. In 2003, the House of Commons Public Administration Select Committee published a draft Civil Service Bill and, building on this, the Government launched a consultation *A draft Civil Service Bill – A Consultation Document* (Cm 6373, November 2004). This document can be found at:

www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/consultation_bill_cm_6373.pdf

31. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (Cm 7342-3).

32. These consultation processes and other public debates revealed a considerable body of opinion in favour of civil service legislation. Therefore, the Government announced in July 2007, in its Green Paper, *The Governance of Britain* (Cm 7170), that it intended to bring forward legislation which would *"*include measures which will enshrine the core principles and values of the civil service in law*"*. The Joint Committee on the

draft Constitutional Renewal Bill concluded that the civil service provisions received "overwhelming support" (paragraph 240, Report of the Joint Committee on the draft Constitutional Renewal Bill. HL Paper 166-I and HC Paper 551-I).

Part 2 Background - Ratification of treaties

33. The non-legislative convention for the Parliamentary scrutiny of treaties was known as the Ponsonby Rule. It provided that treaties which did not come into force on signature, but which instead came into force later when governments expressed their consent to be bound through a formal act such as ratification, should be laid before both Houses of Parliament as a Command Paper for a minimum period of 21 sitting days. The Rule gave no legal effect to a resolution of either House that a treaty should not be ratified. Since 1997, the practice of laying a memorandum alongside treaties to explain their effect has been routine. In addition, in 2000, the Government undertook that it would normally provide the opportunity to debate any treaty involving major political, military or diplomatic issues, if the relevant select committee and the Liaison Committee of the House of Commons so requested (Government response of 31 October 2000 to the House of Commons Procedure Committee's Second Report of Session 1999-2000, Parliamentary Scrutiny of Treaties (HC210)).

34. *The Governance of Britain* Green Paper (Cm 7170, July 2007) set out the Government's belief that Parliament should have the right to scrutinise treaties prior to their ratification. In the Green Paper the Government went on to propose that the procedure for allowing Parliament to scrutinise treaties should be formalised, and committed to consulting on an appropriate means for putting the Ponsonby Rule on a statutory footing.

35. A consultation document *The Governance of Britain – War powers and treaties: Limiting Executive powers* (Cm 7239) was published on 25 October 2007. The document can be found at:

www.justice.gov.uk/docs/cp2607a.pdf

36. The document invited comments on an appropriate means to put the Ponsonby Rule on a statutory footing. The consultation period ran until 17 January 2008. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (Cm 7342-3). The Government published clauses in the draft Constitutional Renewal Bill which provided for treaties to be laid before Parliament for 21 sitting days prior to ratification, and to give effect to the consequences of a negative vote in either House of Parliament, with provision for flexibility and exceptions based on established practice.

Part 3 Background – Parliamentary Standards etc

37. The Government introduced the Parliamentary Standards Bill in June 2009 in response to public concerns over the issue of MPs' expenses. The Bill received Royal Assent on 21 July 2009.

38. The Parliamentary Standards Act 2009 ("the 2009 Act"):

- established the Independent Parliamentary Standards Authority ("the IPSA") with responsibility for:
- paying the salaries of MPs in accordance with the relevant resolutions of the House of Commons;
- drawing up the MPs' allowances scheme and authorising and making payments to MPs under the scheme; and
- preparing a code of conduct relating to MPs' financial interests:
- established a Commissioner for Parliamentary Investigations with powers to investigate any overpayments under the allowances scheme and failures to comply with the requirements in the code relating to the registration of financial interests; and
- created a Speaker's Committee for the Independent Parliamentary Standards Authority responsible for approving the selection of the members of the IPSA and scrutinising the IPSA's estimate of the use of resources.

39. The Committee on Standards in Public Life launched a review of MPs' expenses on 23 April 2009. The Committee's report "MPs' expenses and allowances – supporting Parliament, safeguarding the taxpayer" (Cm 7724) was published on 4 November 2009. The report contained 60 recommendations, the majority of which related to the details of the allowances scheme and, as such fell to the IPSA to implement as part of its responsibility for preparing an allowances scheme. However, a number of the recommendations relate to the role and functions of the IPSA and, as such, required primary legislation.

40. The Government announced in a Written Ministerial Statement of 10 December 2009[1] that it proposed to bring forward legislation to implement ten of the 60 recommendations. The relevant recommendations dealt with the following matters:

- Ensuring that the House of Commons is empowered to remove an MP's right to receive a resettlement grant in cases of significant abuse (recommendation 33);
- The IPSA to be under statutory duties as to efficiency, cost-effectiveness and transparency (recommendations 41, 49 and 60);
- Abolition of the IPSA's functions in respect of the regulation of MPs' financial interests and the associated code of conduct (recommendation 42);
- Responsibility for determining MPs' pay and pensions to be transferred to the IPSA (recommendation 43);
- Replacement of the Commissioner for Parliamentary Investigations with a Compliance Officer (recommendation 44);
- Enforcement powers of the Compliance Officer (recommendation 45);
- The appointment of lay members of the Speaker's Committee (recommendation 48); and

[1] Hansard, col. 33WS-38WS:
www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091210/wmstext/91210m0002.htm#column_33WS

- Repeal of the sunset provisions in section 15 of the 2009 Act (recommendation 53).

41. Part 3 of this Act gives effect to these recommendations.

Part 4 Background – Tax status of MPs and members of the House of Lords

42. On 16 December 2009 the Leader of the House of Commons announced that the Government intended to bring forward legislation to provide that MPs and members of the House of Lords should pay UK tax in the same way as the vast majority of taxpayers in the UK.

43. Part 4 of this Act gives effect to this intention.

Part 5 Background – Transparency of government financial reporting to Parliament

44. There are a number of different systems which have an impact on the control and presentation of government expenditure. These include HM Treasury budgetary controls, supply estimates presented to Parliament for approval and resource accounts prepared by departments at the end of each financial year.

45. These different systems mean that there is significant misalignment between the different bases on which financial information is presented to Parliament and the public. Government financial documents are published in different formats, and on a number of different occasions during the year. This makes it difficult to understand the links and inter-relationships between them.

46. In July 2007 the Government announced in *The Governance of Britain* Green Paper a "Clear Line of Sight" (Alignment) Project to simplify its financial reporting to Parliament by better aligning budgets, estimates and resource accounts. The Treasury submitted detailed proposals for better alignment to Parliament in a Memorandum in March 2009 (Cm 7567). The Liaison Committee of the House of Commons responded to the Government's proposals in its report *Financial Scrutiny: Parliamentary Control over Government's Budgets (HC 804)*, published on 3 July 2009. The report accepted, on behalf of the relevant select committees of the House of Commons, all of the Government's proposals for a better aligned public spending framework as set out in Cm 7567.

47. Part 5 of this Act deals with an aspect of the Alignment Project. *Section 43* amends the Government Resources and Accounts Act 2000 ("GRAA 2000") in order to allow the Treasury to issue directions about the way departments prepare supply estimates and to direct that such estimates are to include information relating to "designated bodies". This provides for departmental estimates and accounts to include the spending of Non-Departmental Public Bodies and other central government bodies for which the departmental has responsibility, thereby aligning with the budgetary treatment. This section also includes provision preventing the designation of a body if it is funded solely from the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund and makes consequential amendments to the GRAA 2000.

48. *Section 44* amends Part 5 of the Government of Wales Act 2006. The changes simplify the arrangements for financial reporting and accountability to the National Assembly for Wales (the "Assembly") by better aligning the contents of the annual budget motion with the use of the resources set out in the resource accounts produced by Ministers and other persons to whom the Assembly votes resources.

Part 6 Background – Public Records and Freedom of Information

49. On 25 October 2007, the Prime Minister announced an independent review into the "30-year rule" (the rule under which most records are transferred to the National Archives and made available to the public by the time they are 30-years old). The Review published its findings in January 2009. On 10 June 2009 the Prime Minister announced the Government's intention to change the relevant period from 30 to 20 years, and to enhance the protection for certain categories of information.

50. The Government response to the 30-Year Rule Review report was published in the form of a Command Paper (Cm 7822) on 25 February 2010.

Part 7 Background - Miscellaneous and Final Provisions

Section 47 – section 3 of the Act of Settlement

51. Section 18(7) of the Electoral Administration Act 2006 ("the 2006 Act") repealed the first entry in Schedule 7 to the British Nationality Act 1981. That entry had modified the application of section 3 of the Act of Settlement (which concerns eligibility for membership of both Houses of Parliament, the Privy Council and certain offices under the Crown) by disapplying part of it in relation to Commonwealth and Republic of Ireland citizens; and in so doing allowed such citizens to be Members of either House and to hold offices under the Crown.

52. This change was made in consequence of the provision at section 18(1) of the 2006 Act, which substituted a new modification of section 3 of the Act of Settlement that applies only for the purposes of membership of the House of Commons: under its terms, Commonwealth citizens who do not have indefinite leave to remain in the UK are prevented from being members of the House of Commons. However, since the drafting of the legislation did not contain provisions expressly saving the first entry in Schedule 7 to the British Nationality Act 1981 in relation to membership of the House of Lords and other offices under the Crown, a question was raised about whether the eligibility of Commonwealth or Republic of Ireland citizens for membership of the House of Lords and other positions was affected.

53. The Government did not consider that the eligibility was affected. In particular, it clearly was not the intention of Parliament in passing the 2006 Act to change the entitlement of Commonwealth and Republic of Ireland citizens to sit in the House of Lords. The Government nevertheless concluded that it was best to put the issue beyond doubt.

Section 48 – Parliamentary elections: counting of votes

54. Rule 44(1) of the parliamentary elections rules contained in Schedule 1 to the Representation of the People Act 1983 ("the rules") provides that the returning officer in a parliamentary election shall make arrangements for counting the votes as soon as practicable after the close of the poll. This gives discretion to returning officers about when exactly the count should begin, and in particular whether it is practicable to start the count on the evening of polling day or on the following day.

55. *Section 48* amends the rules to provide that a returning officer must take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within four hours of the close of the poll.

TERRITORIAL EXTENT

56. The provisions of the Act extend to the whole of the United Kingdom. The Act largely addresses reserved and excepted matters although there are some provisions that affect the executive functions of the devolved administrations.

57. The Act contains provisions that triggered the Sewel Convention in relation to Scotland and so a Legislative Consent Motion in the Scottish Parliament was required. The Sewel Convention provides that the UK Parliament will not normally legislate with regard to devolved matters in Scotland, or to alter the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers without the consent of the Scottish Parliament. The Scottish Parliament gave its consent on 28th January 2010 for the following provisions which alter the executive competence of the Scottish Ministers:

- **Civil service code** – *section 5* requires the First Minister of Scotland to lay before the Scottish Parliament any separate civil service code that applies to civil servants serving the Scottish Executive.
- **Special advisers code** – *section 8* requires the First Minister of Scotland to lay the special advisers code before the Scottish Parliament.
- **Special advisers** – *section 15* prescribes requirements that the First Minister of Scotland must apply when appointing Special Advisers to assist members of the Scottish Executive.
- **Special advisers report –** *section 16* requires the First Minister of Scotland to prepare an annual report about special advisers appointed to assist members of the Scottish Executive and to lay this before the Scottish Parliament.
- **Civil Service Commission's report** – Schedule 1, *paragraph 17(5)* requires the First Minister of Scotland to lay the Civil Service Commission's report before the Scottish Parliament.
- **Requirements to provide information** – *sections 9(6), 13(4), 14(2) and 17(3)* impose requirements to provide information to the Civil Service Commission. Those requirements can apply to parts of the Scottish Administration.

58. The Act contains provisions which confer functions on Welsh Ministers and affect their responsibilities:

- in Part 1, requiring that the First Minister for Wales is consulted about the Civil Service and special advisers code and requiring the First Minister to lay the codes and the Commission's reports before the Assembly; and
- in Part 5, giving the Welsh Ministers the power to designate bodies that must be included in Assembly budget motions.

COMMENTARY ON SECTIONS

PART 1: THE CIVIL SERVICE

CHAPTER 1

Section 1: Application of Chapter

59. *Section 1* applies Chapter 1 of Part 1 of the Act to the civil service of the State, subject to the exclusions listed in *subsections (2)* and *(3)*. The terms "civil service" and "civil servant" throughout this Chapter are therefore to be read as excluding those parts of the civil service listed in *subsections (2)* and *(3)* and the civil servants in those parts of the civil service.

Section 2: Establishment of the Civil Service Commission

60. *Subsection (1)* gives effect to Schedule 1, which establishes the Civil Service Commission as a body corporate with legal personality.

61. *Subsections (3)* and *(4)* set out the main function of the Commission. This concerns recruitment to the Civil Service, covered in *sections 11* to *14*. Reference is also made to the Commission's other functions concerning complaints to the Commission under the civil service and diplomatic service codes of conduct *(section 9)*.

Schedule 1: The Civil Service Commission

62. Schedule 1 makes provision for the Civil Service Commission. It contains provisions relating to: membership of the new Civil Service Commission; appointment of the First Civil Service Commissioner (who in practice will chair the Commission); the other Commissioners and their tenure of office; status and powers of the Commission; regulation of its proceedings; appointment of staff; arrangements for assistance; delegation and committees; financial provision and accounts; publication of its annual report; and transitional arrangements relating the old Civil Service Commission.

Part 1: The Commissioners

63. *Paragraph 1* provides for a minimum of seven members of the Civil Service Commission, one as the First Civil Service Commissioner ("the First Commissioner") and the others Civil Service Commissioners ("the Commissioners").

64. *Paragraphs 2* and *3* provide for the appointment of the First Commissioner and Commissioners, and the terms of appointment. Provision is also made for the appointment of ex-officio Commissioners. This might include for example, the appointment of the Public Appointments Commissioner as a Commissioner.

65. *Paragraph 4* makes provision for the terms of appointment of a Commissioner to include provision for remuneration, allowances and pensions.

66. *Paragraph 5* sets out the circumstances in which the First Commissioner or Commissioner may resign or be removed from office by Her Majesty on the recommendation of the Minister for the Civil Service.

67. *Paragraph 6* makes provision for compensation for the loss of the office of First Commissioner or Commissioner.

Part 2: The Commission

68. *Paragraph 7* establishes the status of the Civil Service Commission as a non-Crown body. It provides that the Commission is not to be regarded as a servant or agent of the Crown and is not to enjoy any status, immunity or privilege of the Crown. It provides that any property held by the Commission is not held on behalf of the Crown.

69. *Paragraph 8* sets out the powers of the Commission and enables it to take any action that facilitates or is incidental or conducive to its functions. Borrowing by the Commission is subject to the agreement of the Minister for the Civil Service.

70. *Paragraph 9* makes provision for committees and sub-committees to assist the Commission in carrying out its functions, and *paragraph 10* makes provision about the procedure of the Commission and its committees and sub-committees.

71. *Paragraph 11* enables the Civil Service Commission to employ staff.

72. *Paragraph 12* enables pension provision to be made for the staff of the Commission, the First Commissioner and the other Commissioners. It provides for such persons to be eligible for membership of a pension scheme under section 1 of the Superannuation Act 1972. It places an obligation on the Civil Service Commission to cover the costs involved in membership of the pension scheme, and to pay the sums involved to the Minister for the Civil Service.

73. *Paragraph 13* enables the Civil Service Commission to enter into arrangements with other parties for the provision of assistance to the Commission. In particular, it enables the Commission to make arrangements with the Minister for the Civil Service for serving civil servants to provide assistance to the Commission.

74. *Paragraph 14* makes provision for the delegation of the Commission's functions.

75. *Paragraph 15* requires the Minister for the Civil Service to make payments to the Civil Service Commission to enable it to carry out its functions. Conditions may be attached. This is in line with the requirements and procedures set down in *Managing Public Money*. The Minister must consult the Commission before setting the level of the payments, or attaching any conditions.

76. *Paragraph 16* makes provision for the accounts and records of the Civil Service Commission. The preparation and content of the annual statement of accounts must comply with HM Treasury requirements, and provide a fair and true view of the Commission's income and expenditure and cash flows over the financial year and the state of its affairs at the end of the financial year. The Commission must send the annual statement of accounts to the Minister for the Civil Service by the date specified by the Minister. The Minister then sends the statement to the Comptroller and Auditor General who is required to examine, certify and report on it, and to lay copies of the statement and report before Parliament, unless the Minister for the Civil Service arranges to do so himself.

77. *Paragraph 17* makes provision for the preparation and laying of the Commission's annual report. The Report is laid before Parliament by the Minister for the Civil Service (unless it has been arranged for the Comptroller and Auditor General to do so, e.g where the annual report has been combined with the annual statement of accounts in a joint document). Copies of the report are also laid before the Scottish Parliament and National Assembly for Wales by the First Ministers of Scotland and Wales respectively.

78. *Paragraph 18* provides a definition of the financial year for the purposes of *paragraphs 16* and *17*. The period begins when *section 2* comes into force (that is, when the Commission is established), and ends with the following 31 March. Thereafter it runs in successive 12 month periods.

79. *Paragraph 19* makes provision for the authentication of the Commission's seal and the execution of documents by the Commission.

Section 3: Management of the civil service

80. *Section 3* provides a power for the Minister for the Civil Service to manage the civil service and a parallel power for the Secretary of State in relation to the diplomatic service. The power to manage includes the power to appoint and dismiss. The general power to manage the civil service, including the power of appointment and dismissal, set out in the Act must be read in conjunction with other sections in the Act, in particular provisions about the Civil Service Commission and requirements about fair and open competition. The power to appoint and dismiss individual civil servants will, as now, continue to be delegated to the Head of the Civil Service and the permanent Heads of Departments provided for under existing statutory powers in the Civil Service (Management Functions) Act 1992.

81. *Subsection (4)* expressly excludes national security vetting from the power to manage the civil service and the diplomatic service. This confirms that national security vetting will continue to be carried out under existing prerogative powers.

82. *Subsection (5)* requires the Secretary of State to seek the agreement of the Minister for the civil service in relation to remuneration and retirement conditions for civil servants in the diplomatic service.

83. *Subsection (6)* provides that the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and the conventions concerning the relationship between Government and Parliament.

Section 4: Other statutory management powers

84. *Subsections (1), (2)* and *(3)* provide that statutory powers of management of the Civil Service (whether contained in legislation passed or made before or after the Act comes into force) are exercisable subject to the powers to manage the Civil Service in *section 3*.

85. *Subsection (5)* expressly excludes the statutory management powers set out in the Superannuation Acts from the general power to manage provided in *section 3*.

Section 5: Civil service code

86. *Section 5* makes provision for codes of conduct for the civil service (with the exception of the diplomatic service). *Section 5* enables the Minister to publish separate codes of conduct for civil servants in the Scottish Executive or the Welsh Assembly Government after first consulting the First Ministers of Scotland and Wales on the content of the code relevant to their respective administrations. The codes published under this section will be along the lines of the existing civil service codes, covering civil servants in the UK Departments in the Civil Service, the Scottish Executive and the Welsh Assembly Government respectively. Copies of the existing codes can be viewed at the following websites:

www.civilservice.gov.uk/about/work/codes/csmc/index.aspx;

www.scotland.gov.uk/Resource/Doc/923/0030759.doc;

www.new.wales.gov.uk/humanresources/publications/civilservicecode/codee.pdf?lang=en

87. There is no Parliamentary procedure attached to the obligation in *subsection (5)* for the Minister for the Civil Service to lay the code before Parliament. The First Ministers of Scotland and Wales are also required to lay the code relevant to their administration before the Scottish Parliament and National Assembly for Wales respectively. Under *subsection (8)* the applicable code or codes form part of a civil servant's terms and conditions.

Section 6: Diplomatic service code

88. *Section 6* makes provision for a code of conduct for the diplomatic service which will be along the lines of the existing code for the diplomatic service, the *Diplomatic Service Code of Ethics*. The code reflects the core principles of the civil service code of conduct. This code must be laid before Parliament, but there is no Parliamentary procedure. Under *subsection (4)* the code forms part of the terms and conditions for civil servants in the diplomatic service.

Section 7: Minimum requirements for civil service and diplomatic service codes

89. *Section 7* sets out the minimum requirements for the civil service and diplomatic service codes of conduct. *Subsections (2)* and *(3)* require civil servants to serve the administration of the day, whatever its political complexion. By *subsection (4)* the code must contain an obligation on civil servants to carry out their duties in accordance with the core civil service values of integrity, honesty, objectivity and impartiality. *Subsection (5)* concerns the provisions of the codes as they apply to special advisers. *Section 8* makes separate provision for the special advisers' code.

Section 8: Special advisers code

90. *Section 8* makes provision for a code of conduct for special advisers. The code published under this section will be along the lines of the existing special advisers' code, which can be viewed at the following website:

www.cabinetoffice.gov.uk/propriety_and_ethics/special_advisers/code.aspx.

91. *Section 8* specifies that the code of conduct for special advisers must provide that a special adviser may not authorise the expenditure of public funds, exercise any power in relation to the management of any part of the civil service (except in relation to another special adviser) or otherwise exercise any statutory or prerogative power. The code of conduct for special advisers will state that special advisers must not be responsible for the line management (including appraisal, reward, promotion or disciplining) of civil servants who are not special advisers.

92. *Section 8* also enables the Minister for the Civil Service to publish separate codes of conduct for special advisers who serve the Scottish Executive or the Welsh Assembly Government after first consulting the First Ministers of Scotland and Wales on the content of the code relevant to their respective administrations.

93. There is no Parliamentary procedure attached to the obligation in *subsection (8)* for the Minister for the civil service to lay the code before Parliament. *Subsections (9)* and *(10)* provide that the First Ministers of Scotland and Wales are also required to lay the code relevant to their administration before the Scottish Parliament and National Assembly for Wales respectively.

94. Under *subsection (11)* the applicable code or codes form part of a special adviser's terms and conditions.

Section 9: Conduct that conflicts with a code of conduct: complaints by civil servants

95. *Section 9* makes provision for civil servants to complain to the Civil Service Commission about alleged breaches of the civil service and diplomatic codes.

96. *Subsection (4)* provides for the codes to include information on the steps a civil servant must take before making a complaint. It is expected that these will reflect the procedures already set out in the existing code.

97. *Subsection (5)* requires the Civil Service Commission to establish procedures for complaints under *subsection (2)*. It requires the Civil Service Commission to consider complaints in accordance with the procedures established by the Commission and allows for the Commission to make recommendations about how the complaint should be resolved.

98. *Subsection (6)* provides that the Commission can require information from the civil service management authority, the civil servant who brought the complaint and any other civil servant whose conduct is involved in the complaint where that is reasonably required to enable the Commission to investigate the complaint.

Section 10: Selections for appointments to the civil service

99. *Section 10* requires that people can only be appointed into the civil service if they have been selected on merit on the basis of fair and open competition. The exceptions to this requirement are set out in *subsections (3)(a)* to *(c)*.

100. Further provision on special adviser appointments and appointments excepted by the recruitment principles are set out in *sections 12* and *15* respectively.

101. *Subsection (4)* provides that those appointed under *subsection (3)(a)* to *(c)* (Heads of Mission or Governors of overseas territories in the diplomatic service, special advisers and appointments excepted in the Commission's recruitment principles) are excepted from the requirement for selection on merit on the basis of fair and open competition only for the duration of that particular appointment. The persons holding such appointments would therefore be subject to the requirements of *section 10* (in particular, the requirement of selection on merit on the basis of fair and open competition) in relation to any further appointments to the civil service unless specified to the contrary in the Commission's recruitment principles.

Section 11: Recruitment principles

102. *Section 11* requires the Commission to publish principles on the application of the requirement in *section 10* of selection on merit on the basis of fair and open competition. These are referred to as "the recruitment principles". The Commission must consult the Minister for the Civil Service before publishing the recruitment principles.

103. *Subsection (4)* requires civil service management authorities to comply with the recruitment principles. Civil service management authorities are any body or person involved in the management of the Civil Service.

Section 12: Approvals for selections and exceptions

104. *Subsection (1)(a)* enables the recruitment principles to specify those appointments (which are subject to the requirement in *section 10* of selection on merit on the basis of fair and open competition) that require the approval of the Commission before they can be made. *Subsections (2)* and *(3)* enable the Commission to participate in the selection process for any such appointments as they see fit.

105. *Subsection (1)(b)* and *subsection (4)* enable the recruitment principles to set out exceptions to the requirement of selection on merit on the basis of fair and open competition where justified by the needs of the civil service or in the interests of enabling the civil service to participate in government employment initiatives.

106. *Subsection (6)* makes provision for the recruitment principles to specify the procedures and the terms and conditions for appointments made under the exceptions contained in the recruitment principles under *subsection (3)(c)* of *section 10*. *Subsection (7)* allows the recruitment principles to give the Commission or civil service management authorities discretion in applying aspects of the recruitment principles.

Section 13: Complaints about competitions

107. *Section 13* allows people to complain to the Commission about selections to the civil service if that person has reason to believe the selection was made in breach of the requirement in *section 10(2) (selection on merit on the basis of fair and open competition)*.

108. *Subsection (3)* requires the Civil Service Commission to establish procedures for complaints under *subsection (1)*. It requires the Civil Service Commission to consider complaints in accordance with the procedures established by the Commission and allows for the Commission to make recommendations to resolve the complaint. The Commission can require information from civil service management authorities and the complainant where that information is reasonably required for the purpose of considering the complaint.

Section 14: Monitoring by the Commission

109. *Section 14* requires the Commission where it considers necessary to review recruitment policies and practices, to establish whether the requirement in *section 10* and the recruitment principles are being upheld and not undermined. For these purposes the Commission may require a civil service management authority to provide it with information if the Commission reasonably requires that information.

Section 15: Definition of "special adviser"

110. *Section 15* makes provision about the appointment of special advisers and their terms and conditions of appointment. Special adviser appointments by a Minister of the Crown are approved by the Prime Minister. Special advisers appointed to assist Scottish or Welsh Ministers must be selected for appointment by the First Minister for Scotland or Wales as appropriate.

111. The terms and conditions of all special advisers are approved by the Minister for the Civil Service. Appointments of special advisers are exempt from the requirement in *section 10* of selection on merit on the basis of fair and open competition. In each administration, a special adviser appointment ends when the appointing Minister's term of office ends. In the UK Government, this is the earlier of either the date on which the Minister ceases to hold office or the end of the day after the day of the parliamentary election following appointment. In the devolved administrations in

Scotland and Wales, this is when the First Minister's term of office ends. Under *subsection (2)*, appointments made by a person acting as First Minister during a vacancy in that office end when that person ceases to act as First Minister.

Section 16: Annual reports about special advisers

112. *Section 16* makes provision for annual reports about special advisers, and the laying of such reports before Parliament, the Scottish Parliament and the National Assembly for Wales. Similar reports are already published by the Minister for the Civil Service and the First Minister of Scotland and can be viewed at:

www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080722/wmstext/80722m0004.htm#08072253000033

www.scottish.parliament.uk/business/pqa/wa-08/wa0609.htm#43

Section 17: Agreements for the Commission to carry out additional functions

113. *Section 17* enables the Minister for the Civil Service and the Civil Service Commission to agree that the Commission may carry out additional functions in relation to the Civil Service. The Commission must carry out those functions.

CHAPTER 2

Section 19: Consequential amendments and transitional provision

114. *Section 19* gives effect to Schedule 2.

Schedule 2: Consequential amendments and transitional provision relating to Part 1

Part 1: Consequential amendments

115. *Paragraphs 1* to *18* make amendments to various Acts to change references to the "Home Civil Service" and the "Civil Service Commissioners" to reflect the new terminology in this Act. *Paragraphs 9* and *15* make clear that Scottish and Welsh Ministers' existing powers to manage and appoint to the Civil Service will be exercisable under the Act and the management powers will continue to be delegable to Scottish and Welsh Ministers under the Civil Service (Management Functions) Act 1992.

Part 2: Consequential amendments to other legislation

116. *Paragraphs 19* and *20* revoke the Civil Service Order in Council 1995, the Diplomatic Service Order in Council 1991 and all amending Orders in Council.

117. *Paragraphs 21* to *24* amend subordinate legislation to change references to the "Home Civil Service" or the "Civil Service Commissioners".

Part 3: Transitional provision relating to the Civil Service Commission

118. *Paragraphs 25 to 37* make transitional provision relating to the Civil Service Commissioners who operated under the prerogative ("the old Commission").

119. *Paragraph 26* provides for the First Civil Service Commissioner in the old Commission to become the First Civil Service Commissioner in the statutory Civil Service Commission ("the new Commission") when it becomes operational. The First Civil Service Commissioner who moves to the new Commission on this basis will be entitled to hold office for the remaining period of their original appointment. For example, where the serving First Civil Service Commissioner has been appointed for a five year term, and has served two years at the time the new Civil Service Commission becomes operational, he or she will be entitled to remain in office for a further three years, making a total period of appointment of five years. The other terms of the original appointment will continue to apply, unless the individual concerned agrees different terms.

120. *Paragraph 27* makes provision to restrict the period of office of the First Commissioner where that person was previously head of the old Commission. The aggregate of time the individual concerned served as First Civil Service Commissioner in the old Commission, and as First Commissioner in the new Commission, must not exceed a total of five years.

121. *Paragraph 28* provides for Commissioners who hold office in the old Commission immediately prior to the establishment of the Commission to become Commissioners in the new Commission when it becomes operational. A Civil Service Commissioner who moves to the new Commission on this basis will be entitled to hold office for the remaining period of their original appointment. For example, where the serving Civil Service Commissioner has been appointed for a three year term, and has served two years at the time the new Civil Service Commission becomes operational, he or she will be entitled to continue to serve as a Commissioner for a further year, making a total period of appointment of three years. Under these transitional arrangements, the other terms of the original appointment will continue to apply, unless the individual concerned agrees to different terms.

122. *Paragraph 29* makes provision to restrict the period of office of a Commissioner where that person was previously a Commissioner in the old Commission. The aggregate of time the individual concerned served as a Civil Service Commissioner under the old arrangements, and as a Civil Service Commissioner in the new Commission, must not exceed a total of five years. *Paragraph 29(4)* contains an exception from that in respect of the Commissioner for Public Appointments who currently holds office as a Civil Service Commissioner on an *ex officio* basis.

123. *Paragraphs 31 to 36* provide that certain functions that the old Commission are performing when the provisions are commenced can be continued by the Civil Service Commission and for property, rights and liabilities to transfer as appropriate to the new Commission.

124. *Paragraph 37* establishes that in the period between the passing of the Act and the new Civil Service Commission becoming operational, the serving First Civil Service Commissioner and the other serving Civil Service Commissioners in the old

Commission may undertake functions conferred on the new Civil Service Commission by the Act, on behalf of the new Commission.

Part 4: Other transitional provision

125. *Paragraphs 38* and *39* preserve actions done under existing prerogative powers including decisions to appoint civil servants who will continue to hold their positions under the new power contained in *section 3*.

126. *Paragraph 40* provides for the parts of the civil service of the State expressly excluded from the provisions in Chapter 1 of Part 1 to be managed under existing prerogative powers and preserves the positions of those civil servants.

127. *Paragraphs 41* and *42* provide that any persons appointed under an exception to the principle of selection on merit following fair and open competition permitted by the old Commission are not to be treated as civil servants unless the Commission provides otherwise in the recruitment principles.

128. *Paragraph 43* makes transitional provision in relation to special advisers appointed before this paragraph comes into force.

Part 2: Ratification of treaties

Section 20: Treaties to be laid before Parliament before ratification

129. This section sets out the main procedure to be adopted in relation to treaties before they are ratified on behalf of the United Kingdom. The procedure described is based upon the convention known as the Ponsonby Rule, which has been applied to the ratification of treaties since 1924 (see *Erskine May*, 23rd edition, page 264).

130. *Subsection (1)* states that a treaty may not be ratified unless (a) a Minister of a Crown has in the first instance laid before Parliament a copy of the treaty, (b) the treaty has been published in a way that he or she thinks appropriate and (c) a period A has expired without either House having resolved that the treaty should not be ratified.

131. *Subsection (2)* defines the meaning of "period A" as a period of 21 sitting days beginning with the first sitting day after the date on which the treaty has been laid.

132. *Subsection (3)* then explains that a further procedure, which is set out in *subsections (4)* to *(6)* (see below), will apply if the House of Commons resolves that the treaty should not be ratified (whether or not the House of Lords did so too).

133. *Subsection (4)* provides that a treaty may still be ratified if, after the House of Commons has resolved that a treaty should not be ratified during period A, (a) a Minister of the Crown has laid before Parliament a statement explaining why the treaty should nevertheless be ratified, and (b) a period B having expired without the House of Commons having (again) resolved that the treaty should not be ratified.

134. *Subsection (5)* defines the meaning of "period B" as a period of 21 sitting days beginning with the first sitting day after the date on which the Minister has laid the statement as to why the treaty should nevertheless be ratified.

135. *Subsection (6)* states that such a statement as to why the treaty should be ratified may be laid more than once. This means that the process outlined in *subsection (4)* can start again, should the House of Commons resolve during the second or any subsequent 21 sitting day period that a treaty should not be ratified.

136. *Subsections (7)* and *(8)* then explain that, if the House of Lords has resolved that a treaty should not be ratified within period A, but the House of Commons did not do so, the treaty may nevertheless be ratified if a Minister of the Crown lays before Parliament a statement explaining why the treaty should be ratified.

137. *Subsection (9)* defines a "sitting day" as a day on which both Houses of Parliament sit.

Section 21: Extension of 21 sitting day period

138. This section provides that a Minister of the Crown may extend the 21 sitting day period. Under *subsection (1)* the Minister may extend the period by 21 days or less.

139. *Subsections (2)* and *(3)* provide that the period may be extended by laying a statement in Parliament before the expiry of the relevant period that indicates that the period is to be extended and the length of that extension.

140. *Subsection (4)* requires the Minister to publish the statement in a way that the Minister thinks appropriate. *Subsection (5)* provides that the period can be extended more than once.

Section 22: Section 20 not to apply in exceptional cases

141. *Subsection (1)* provides that the procedure under section 20 does not apply if a Minister of the Crown is of the view that, exceptionally, a treaty should be ratified without the conditions of that section having been met.

142. *Subsection (2)* provides that *subsection (1)* may not be invoked where either House has resolved against ratification in accordance with *section 20(1)(c)*.

143. *Subsection (3)* provides that if, exceptionally, the treaty is to be, or has been, ratified without following the procedure in *section 20*, the Minister of the Crown must either before, or as soon as practicable after, the treaty is ratified, lay before Parliament a copy of the treaty and a statement indicating why the Minister takes the view that the conditions in *section 20* should not apply. The Minister of the Crown must also arrange for the treaty to be published in a way that he or she thinks appropriate.

Section 23: Section 20 not to apply to certain descriptions of treaties

144. This section makes provision in respect of those classes of treaties that were dealt with outside the Ponsonby Rule, because they are scrutinised by other means.

145. *Subsection (1)* states that section 20 does not apply to a treaty covered by section 12 of the European Parliamentary Elections Act 2002 (which provides for treaties resulting in an increase in the European Parliament's powers not to be ratified unless approved by Act of Parliament) or by section 5 of the European Union (Amendment) Act 2008 (which provides for amendments to the founding treaties not to be ratified unless approved by Act of Parliament).

146. *Subsection (2)* states that the section 20 procedure does not apply to treaties in relation to which an Order in Council may be made under section 158 of the Inheritance Tax Act 1984 (double taxation conventions), section 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation arrangements) or section 173 of the Finance Act 2006 (international tax enforcement arrangements).

147. *Subsection (3)* states that the procedure does not apply to treaties concluded by the government of a British Overseas Territory, the Channel Islands or the Isle of Man. (Such treaties are concluded under the authority given by the United Kingdom Government).

148. *Subsection (4)* provides for treaties that have already been laid before Parliament before section 20 comes into force. It states that these treaties will not be covered by section 20. This means that the legislation does not cover treaties that have already been laid under the Ponsonby Rule, even if ratification has not yet taken place.

Section 24: Explanatory memoranda

149. Section 24 provides that where a Minister lays a treaty before Parliament under this Part, the treaty shall be accompanied by an explanatory memorandum explaining the provisions of the treaty, the reasons why ratification is sought and any other matters the Minister considers appropriate.

Section 25: Meaning of "treaty" and "ratification"

150. This section defines "ratification" and "treaties". "Treaty" is defined as being an agreement between states (or between states and international organisations) which is binding under international law. *Subsection (2)* clarifies that certain instruments made under a treaty are not within the definition given in *subsection (1)*. But amendments to a treaty are within the definition of "treaty".

151. *Subsection (3)* provides a definition for "ratification" to include those acts that are considered equivalent to ratification (accession, approval or acceptance, or deposit or delivery of a notification that domestic procedures have been completed) which establish as a matter of international law the consent of the United Kingdom to be bound by the treaty.

PART 3: PARLIAMENTARY STANDARDS ETC

Section 26: Compliance Officer

152. *Subsection (1)* substitutes subsections (3) and (4) of section 3 of the Parliamentary Standards Act 2009 ("the 2009 Act"). These existing subsections establish the Commissioner for Parliamentary Investigations. The substituted subsections establish the office of Compliance Officer for the Independent Parliamentary Standards Authority ("the IPSA") in place of the Commissioner for Parliamentary Investigations.

153. *Subsection (2)* introduces Schedule 3 which substitutes a new Schedule 2 to the 2009 Act.

Schedule 3: Parliamentary Standards Act 2009: substituted Schedule 2

154. The substituted Schedule 2 to the 2009 Act makes provision for the appointment of the Compliance Officer, for his or her terms and conditions, resignation and removal from office, remuneration and status.

155. *Paragraph 1* provides for the Compliance Officer to be appointed by the IPSA. Whilst the Compliance Officer will be appointed by the IPSA, he or she will be an independent office holder and not an employee of the IPSA.

156. *Paragraph 3* sets limits on the term of office of the Compliance Officer. The Compliance Officer will be appointed for a single fixed term not exceeding five years.

157. *Paragraph 4* provides that the Compliance Officer may resign his or her office by giving written notice to the IPSA. The Compliance Officer may be removed from office by the IPSA on one of the grounds specified in *paragraph 4(2)*, namely, if the person is convicted of an offence, becomes bankrupt or is unfit or unable to carry out the functions of the office.

158. *Paragraph 7* places a duty on the IPSA to provide the Compliance Officer with adequate resources to discharge his or her functions. Because the Compliance Officer's staffing and other resources will be provided by the IPSA there is no requirement on the Compliance Officer to prepare annual accounts.

159. *Paragraph 8* requires the Compliance Officer to prepare an annual report which he or she must send to the IPSA, which must in turn send it to the Speaker to be laid before Parliament. The Compliance Officer must publish the annual report in such manner as he or she considers appropriate.

160. *Paragraph 9* enables the IPSA to appoint a temporary Compliance Officer for a period of up to 6 months in the event that there is a vacancy in the office of Compliance Officer. The appointee must be from amongst the staff of the Compliance Officer's office.

161. *Paragraph 11* extends the Freedom of Information Act 2000 to cover the Compliance Officer. This will mean that the Compliance Officer will have to adopt and maintain a publication scheme explaining how he or she intends to handle the information in his or her possession, as well as being obliged to consider requests for information in accordance with the provisions of that Act.

Section 27: Membership of Speaker's Committee

162. This section amends Schedule 3 to the 2009 Act which makes provision for the Speaker's Committee for the Independent Parliamentary Standards Authority which has the functions of approving the selection of candidates for appointment as a member of the IPSA and scrutinising the IPSA's annual estimate of the use of resources. Schedule 3 to the 2009 Act currently provides that the membership of the Speaker's Committee shall comprise the Speaker of the House of Commons, the Leader of the House of Commons, the chair of the Committee on Standards and Privileges, and five MPs who are not Ministers of the Crown. The section amends Schedule 3 of the 2009 Act so as to augment the membership of the Speaker's Committee by adding three lay members. The lay members must be persons who are not, or have never been, MPs (new paragraph 2A(1) of Schedule 3). Lay members will be appointed for a single fixed term not exceeding 5 years (new paragraph 2A(4) of Schedule 3); as such their appointment will not terminate with the dissolution of a Parliament. The lay members may be paid by the IPSA such remuneration and allowances as the Speaker may determine (new paragraph 2A(8) and (9) of Schedule 3).

Section 28: Transparency etc

163. *Subsection (2)* inserts a new section 3A into the 2009 Act which places the IPSA under a general duty to have regard to the principles that it should act in a way which is efficient, cost-effective and transparent. This general duty will replace the narrower duty on IPSA to do things efficiently and cost-effectively set out in paragraph 10 of Schedule 1 to the 2009 Act (that paragraph will be repealed by *paragraph 7(2)* of Schedule 5 to the Act). IPSA will also be required to have regard to the principle that MPs should be supported in efficiently, cost-effectively and transparently carrying out their parliamentary functions.

164. *Subsection (3)* amends section 5 of the 2009 Act (which requires the IPSA to prepare and keep under review an allowances scheme) so as to require the IPSA to publish, alongside the allowances scheme and any revisions to it, a statement of its reasons for adopting the scheme or making revisions to it.

165. *Subsection (4)* amends section 6 of the 2009 Act (which sets out the framework for dealing with claims under the allowances scheme) to require the IPSA to publish information about each claim for an allowance submitted by an MP and each payment made by the IPSA in response to such a claim. The precise information to be published and the frequency of publication will be a matter for the IPSA in accordance with the procedures it determines for this purpose. The IPSA is required to consult specified consultees, and other persons it considers appropriate, before determining such procedures (new section 6(10) of the 2009 Act).

Section 29: MPs' salaries

166. *Subsection (1)* substitutes a new section 4 and 4A for section 4 of the 2009 Act. The current section 4 of the 2009 Act provides that IPSA is to pay MPs' salaries in accordance with resolutions of the House of Commons. The new section 4 also gives the IPSA responsibility for paying the salaries of MPs but provides that the amounts of the salaries are also to be determined by the IPSA. New section 4 also sets out the circumstances under which salaries will be paid. Section 4A makes further provision about the determination of MPs' salaries.

167. New section 4(1) provides for salaries to be paid to MPs. The salaries are to be paid by the IPSA monthly in arrears (new section 4(2) and (3)). New section 4(4) provides that the salaries will be determined by the IPSA in accordance with the provisions of new section 4A.

168. New section 4(5) sets out the definition of "relevant period" for the purpose of new section 4(1) and therefore the period for which MPs are to receive a salary. By virtue of new section 4(6) no salary is payable until the MP has made and subscribed the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation).

169. New section 4(7) provides that the duty to pay a salary is subject to anything done in the exercise of the disciplinary powers of the House of Commons so that a salary can be withheld, or deductions made from it, as a consequence of the exercise of the disciplinary powers of the House of Commons.

170. New section 4A(2) allows the IPSA to determine that the salaries of those holding an office or position specified in a resolution of the House of Commons, such as a Chairman of a Select Committee, are to be paid at a higher rate than for other Members of the House. New section 4A(3) permits the IPSA to make different provision under new section 4A(2) for different offices or positions. This will allow the amount of the additional salary paid to be tailored to the office or position.

171. New section 4A(4) gives the IPSA the authority to include a formula or mechanism in the determination so as automatically to adjust salaries without the need for a further determination.

172. A determination (other than the first determination) may have retrospective effect so that, for example, an increase in salary could be backdated to a point before the determination was made (new section 4A(5).

173. Under new section 4A(6), the IPSA is required to carry out a review of MPs' salaries in the first year of each Parliament (subject to *subsection (2)*). It also permits the IPSA to carry out a review at any other time it considers appropriate.

174. New section 4A(7) lists those bodies and persons that the IPSA must consult as part of its process of reviewing salaries and making determinations. These are the Review Body on Senior Salaries, representatives of those likely to be affected by the

determination or the review, the Minister for the Civil Service, HM Treasury and any other person that the IPSA considers appropriate.

175. The IPSA is required to publish any determination of salaries it makes and a statement explaining how it reached such a determination (new section 4A(8)). New section 4A(9) creates a duty on the IPSA to publish a statement explaining why it has not changed its determination on salaries if it carries out a review but decides not to make a new determination.

176. *Subsection (2)* provides that the first determination made by the IPSA does not have to come into effect before 1 April 2012. It also removes the need for the IPSA to carry out a review in the first year of any Parliament beginning before 1 April 2012.

177. *Subsection (3)* ensures that, until the IPSA's first determination comes into effect, the amounts of MPs' salaries will continue to be determined by resolutions of the House of Commons.

Section 30: MPs' allowances scheme

178. This section amends section 5 of the 2009 Act (which requires the IPSA to prepare and keep under review an allowances scheme). It provides that the duty on the IPSA to pay an allowance to an MP in accordance with the allowances scheme is subject to any disciplinary actions taken against the MP by the House of Commons. Such action could, amongst other things, include the withholding of one or more allowances for a specified period. Substituted section 4(7) of the 2009 Act (which replicates existing section 4(2)) makes equivalent provision in respect of the payment of MPs' salaries by the IPSA.

Section 31: Allowances claims

179. *Subsections (1)* to *(4)* of this section amend section 6 of the 2009 Act (which sets out the framework for dealing with claims under the allowances scheme). New section 6(6)(b) and (c) and (6A), as inserted by *subsections (3)* and *(4)*, enable the allowances scheme to include provision for deducting from allowances due to an MP, or from an MP's salary, overpaid expenses which the MP has voluntarily agreed to repay (including under an agreement made with the Compliance Officer under substituted section 9(8)) or is required to repay pursuant to a repayment direction (issued under paragraph 1 of new Schedule 4 to the 2009 Act). The scheme may also include provision for the recovery of amounts payable by virtue a penalty notice imposed under paragraph 6 of new Schedule 4 to the 2009 Act.

180. *Subsection (5)* inserts a new section 6A which makes further provision in respect of determinations by the IPSA to refuse an MP's expenses claim or to pay such a claim in part only. New sections 6A(1) and (2) provide for a review mechanism if the IPSA determines that a claim should be refused or paid only in part. The mechanism supersedes that contained in subsections (4) and (5) of current section 6 of the 2009 Act (which provide for a review by the IPSA) which are repealed by *subsection (2)*. Under new section 6A(1) an MP, after having given the IPSA a reasonable opportunity to reconsider its decision to refuse (in whole or in part) an expenses

claim, may ask the Compliance Officer to review the IPSA's decision (including any modification of that decision following the IPSA's own review). On completion of the review by the Compliance Officer, he or she may either confirm that the IPSA's determination of the expenses claim was correct or alter that determination. Where the Compliance Officer decides to alter the IPSA's determination, the Compliance Officer may also make findings about the way in which the IPSA dealt with the expenses claim (new section 6A(3)).

181. An MP may appeal to the First-tier Tribunal against the outcome of the Compliance Officer's review (new section 6A(6)). Such an appeal is by way of a rehearing (new section 6A(8)). An appeal must be lodged within 28 days of the day the Compliance Office sends notice of his or her decision to the MP; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (new section 6A(7)). Under the provisions of the Tribunals, Courts and Enforcement Act 2007 there is a right of appeal on a point of law to the Upper Tribunal against the decision of the First-tier Tribunal.

182. The IPSA is required to give effect, as necessary, to the outcome of the Compliance Officer's review but not before the period for making an appeal has lapsed and, if an appeal is lodged, before the appeal (and any further in time appeal) has been withdrawn or determined (new section 6A(4) and (5)).

183. *Subsection (6)* amends section 7 of the 2009 Act (which requires the IPSA to provide MPs with guidance about taxation issued by Her Majesty's Revenue and Customs) so as to place a duty on the IPSA to prepare and publish guidance for MPs about making claims under the allowances scheme. The IPSA must additionally provide to any member on request such further advice about making claims as the IPSA considers appropriate.

Section 32: MPs' code of conduct relating to financial interests

184. This section repeals section 8 of the 2009 Act which requires the IPSA to prepare, and keep under review, a code of conduct relating to MPs' financial interests. Responsibility for maintaining such a code of conduct will, as a result, be retained by the House of Commons.

Section 33: Investigations

185. This section replaces the existing section 9 of the 2009 Act (which made provision for investigations by the Commissioner for Parliamentary Investigations) with new sections 9 and 9A which provide for investigations by the Compliance Officer.

186. New section 9(1) provides that the Compliance Officer may conduct an investigation if he or she has reason to believe that a member of the House of Commons may have been overpaid an allowance under the allowances scheme.

187. New section 9(2) sets out who may initiate an investigation. This can be on the Compliance Officer's own initiative, at the request of the IPSA, at the request of the MP concerned, or as the result of a complaint from an individual.

188. New section 9(3) requires the MP concerned and the IPSA to provide any information reasonably required by the Compliance Officer for the purposes of the investigation and to do so within the period specified by the Compliance Officer. Such information may include documents and may extend to providing explanations as to the information contained in such documents.

189. New section 9(4) to (8) deal with the conduct of investigations by the Compliance Officer.

190. New section 9(4) and (5) set out a two stage process whereby the Compliance Officer, following his or her investigation, prepares provisional findings and then concludes the investigation by issuing a statement of his or her definitive findings. The MP concerned and the IPSA will have an opportunity to make representations to the Compliance Officer during the course of the investigation and following receipt of the Compliance Officer's provisional findings. By virtue of procedures made under new sections 9A(2)(b) and (3), in making representations during the investigation phase an MP will have an opportunity to give oral evidence to the Compliance Officer and to call and examine witnesses.

191. New section 9(6) provides that the findings of the Compliance Officer may include a finding that the MP concerned has failed to co-operate with the investigation by not providing the Compliance Officer with requested information within the timeframe specified. Findings may also include findings about the role of the IPSA in respect of the matters under investigation. The Compliance Officer may, therefore, make a finding that the MP concerned had been paid expenses which should not have been paid under the allowances scheme, but that this is either wholly or partly the fault of the IPSA.

192. By virtue of new sections 9(7) and (8) the Compliance Officer need not make a definitive finding if the MP has accepted the provisional finding, if such other conditions as may be specified by the IPSA are met, and if the MP repays the IPSA such an amount as the Compliance Officer considers reasonable. The Compliance Officer will have discretion whether to terminate an investigation through this procedure.

193. New section 9A requires the IPSA to determine procedures for the conduct of investigations by the Compliance Officer. Such procedure must, amongst other things, cover the handling of complaints from individuals. This may, for example, include procedures for refusing to conduct an investigation in response to a complaint where the complaint is vexatious or is frivolous. The IPSA must also determine procedures about the circumstances in which findings of the Compliance Officer and agreements reached between the Compliance Officer and an MP as to the voluntary repayment of overpaid expenses are to be published (new section 9A(4)). The IPSA must also determine procedures in respect of the publication of the Compliance Officer's conclusions of his or her review of a decision by the IPSA not to pay (in part or in

full) an MP's expenses claim and of his or her decision to issue a penalty notice under new Schedule 4 (new section 9A(5)).

194. New section 9A(6) requires that such procedures must be fair and also requires the IPSA to consult the Speaker, the Leader of the House of Commons, the Committee on Standards and Privileges, the Compliance Officer and any other person the IPSA considers appropriate, in determining its procedures.

Section 34: Enforcement

195. This section inserts new section 9B into the 2009 Act and gives effect to Schedule 4, which inserts a new Schedule 4 into the 2009 Act. New section 9B(1) introduces new Schedule 4 to the 2009 Act which sets out the enforcement powers of the Compliance Officer. In addition to those enforcement powers, new section 9B(2) provides that the Compliance Officer may also provide information to the Parliamentary Commissioner for Standards. For example, if the Compliance Officer discovered information about an MP which was relevant to the work of that Commissioner, the Compliance Officer would be able to provide that information to him or her.

Schedule 4: Parliamentary Standards Act 2009: new Schedule 4

196. New Schedule 4 to the 2009 Act sets out the enforcement powers of the Compliance Officer. These take two forms. Part 1 of the Schedule sets out powers to recover overpaid expenses and Part 2 confers powers to impose a civil penalty on MPs in defined circumstances.

197. Paragraph 1 of new Schedule 4 confers power on the Compliance Officer to issue an MP with a repayment direction. The power is exercisable where, following an investigation under section 9 of the 2009 Act, the Compliance Officer has found that an MP has been paid an amount under the allowances scheme which should not have been paid and that the amount has not been repaid (sub-paragraph (1)). Where the Compliance Officer makes a finding that the IPSA was wholly or partly at fault in making an overpayment, he or she has a discretion whether or not to issue a repayment direction; where there is no such finding the Compliance Officer must issue a repayment direction (sub-paragraphs (2) and (3)). Where the Compliance Officer issues a repayment direction in circumstances where he or she has made a finding that the IPSA is wholly or partly at fault, the direction must require such amount to be repaid as the Compliance Officer considers reasonable; in all other cases the repayment direction must require the full amount of the overpayment to be repaid (sub-paragraph (4)). A repayment direction must specify the date by which the required repayment must be made (sub-paragraph (5)). A repayment direction may also require the MP concerned to pay interest on the amount overpaid and the costs of the IPSA in relation to the amount to be repaid, including the costs of the Compliance Officer's investigation (sub-paragraph (6)).

198. The decision whether to require an MP to pay interest on the overpayment or the costs of the investigation will be at the discretion of the Compliance Officer. However, the Compliance Officer will be required to have regard to guidance issued by the IPSA under paragraph 2. Such guidance must, in particular, cover whether, if at all, the

Compliance Officer should require an MP to pay interest or costs in circumstances where the Compliance Officer has found the IPSA to be wholly or partly at fault (paragraph 2(2)). Where the Compliance Officer imposes a requirement to pay costs, the amount is to be calculated in accordance with a scheme prepared by the IPSA (paragraph 2(3)).

199. Paragraph 3 provides for appeals against a repayment direction. An appeal will be to the First-tier Tribunal. An MP will be able to challenge a finding by the Compliance Officer that there has been an overpayment of expenses; a decision by the Compliance Officer to require the MP to pay interest on the overpayment and/or the costs of the investigation; a decision by the Compliance Officer to impose a repayment direction in circumstances where the Compliance Office has made a finding that the IPSA was wholly or partly at fault; and, in cases where such a finding has been made, the amount specified in the repayment direction (sub-paragraph (1)). An appeal must be lodged within 28 days of the repayment direction being sent to a member; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (sub-paragraph (2)). An appeal to the First-tier Tribunal will be by way of a rehearing (sub-paragraph (3)). Where the First-tier Tribunal allows an appeal it may revoke the repayment direction (and, by implication, the decision of the Compliance Officer that there has been an overpayment), revoke or vary any requirement contained in the repayment direction (for example, the requirement to pay interest or costs may be overturned or reduced, or the amount of expenses to be repaid by the MP could be reduced), or make any other order it thinks fit (sub-paragraph (5)).

200. Paragraph 4 enables an MP subject to a repayment direction to apply to the Compliance Officer to extend (or further extend) the repayment period specified in the repayment direction. Such an application must be made before the expiry of the repayment period (sub-paragraph (1)). An MP may appeal to the First-tier Tribunal against the decision of the Compliance Officer (in practice, a decision to refuse to extend the repayment period or to extend it by the duration requested by the MP). An appeal must be lodged within 28 days of the day the Compliance Office sends notice of his or her decision to the MP, although the First-tier Tribunal may give permission for an out of time appeal to be lodged (sub-paragraph (5)). The appeal will be by way of a rehearing (sub-paragraph (6)). The Tribunal may revoke or vary (for example, by substituting a new repayment period) the Compliance Officer's decision and make such other order as it thinks fit (sub-paragraph (8)).

201. Paragraph 5 provides for the enforcement of a repayment direction. Enforcement action can only be taken on the expiry of the 28 day period for bringing an appeal against a repayment direction or, if an appeal is lodged in time, on the withdrawal or determination of that appeal (and any subsequent in time appeal) (sub-paragraphs (1) and (2)). The IPSA may recover the amount specified in the repayment direction (that is, the overpaid expenses and any interest or costs) by deducting the amount from the MP's salary or any allowances payable to the MP (sub-paragraph (3)). It is expected that this method of recovery will be used in the majority of cases. Where this method of recovery is not possible, for example, where the person subject to a repayment direction is no longer an MP, the Compliance Officer may seek to enforce payment

through an order of the county court or, in Scotland, the sheriff's court (sub-paragraphs (4) and (5)).

202. Paragraph 6 enables the Compliance Officer to impose a civil monetary penalty if he or she has made a finding that the MP has, without reasonable excuse, failed to provide the Compliance Officer with information pursuant to his or her investigation (sub-paragraph (3)). A penalty notice may also be imposed if an MP has failed to comply with the requirements of a repayment direction (that is, that the MP has failed to pay the amount specified or failed to do so within the repayment period) (sub-paragraph (4)).

203. Under paragraph 7 the maximum amount of the penalty that the Compliance Officer may impose is £1,000 (sub-paragraph (2)). This amount may be increased (but not decreased) by order subject to the affirmative resolution procedure in the House of Commons (sub-paragraphs (3) to (5)).

204. A penalty notice must include specified information, including the amount of the penalty, the reasons for imposing the penalty, the deadline for paying the penalty and the procedure for appealing (paragraph 8).

205. Paragraph 9 requires the IPSA to prepare guidance about the circumstances in which the Compliance Officer should impose a penalty and how the Compliance Officer should determine the amount of the penalty (subject to the statutory maximum) (sub-paragraph (1)). The Compliance Officer will be required to have regard to such guidance.

206. Paragraph 10 enables the Compliance Officer to review the decision to impose a penalty notice. Such a review may be at the request of the MP concerned or on the Compliance Officer's own initiative.

207. Paragraph 11 confers a right of appeal to the First-tier Tribunal against the imposition of a penalty notice (sub-paragraph (1)). An appeal must be lodged within 28 days of the penalty notice being sent to a member; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (sub-paragraph (2)). The appeal is by way of a rehearing (sub-paragraph (3)). Where it allows an appeal, the Tribunal may either cancel the penalty notice or reduce the penalty (sub-paragraph (4)).

208. Paragraph 12 makes similar provision for the enforcement of penalty notices as paragraph 5 does for the enforcement of repayment directions.

209. Paragraph 13 provides for the payment of monies paid in pursuance of a penalty notice to be paid into the Consolidated Fund.

Section 35: Relationships with other bodies etc

210. This section inserts new section 10A into the 2009 Act. New section 10A(1) requires the IPSA and the Compliance Officer to prepare a joint statement detailing how they will work with the Parliamentary Commissioner for Standards, the Director of Public

Prosecutions, the Metropolitan Police Commissioner and such other persons as they consider appropriate. The IPSA and the Compliance Officers must consult the same persons before preparing the joint statement (new section 10A(2)).

211. New section 10A(3) provides that the investigatory and enforcement powers of the Compliance Officer do not affect the disciplinary functions of the House of Commons. It will, therefore, be open to the House to impose its own parliamentary sanctions on an MP who has been the subject of enforcement action by the Compliance Officer. Conversely the Compliance Officer may exercise his or her investigatory and enforcement powers in respect of an MP who is, or has been, prosecuted for an offence or disciplined by the House in respect of the same conduct (new section 10A(4)).

Section 36: Further functions of the IPSA and Commissioner

212. This section repeals section 11 of the 2009 Act which would permit the IPSA to take over the functions of the non-statutory Parliamentary Commissioner for Standards (the "Standards Commissioner") concerning registers held by the Standards Commissioner, for example, the Register of Interests of Members' Secretaries and Research Assistants. Section 11 would also have permitted the Commissioner for Parliamentary Investigations to take over functions of the Standards Commissioner. The repeal is consequential upon the repeal of section 8 of the 2009 Act and the removal of the office of the Commissioner for Parliamentary Investigations.

Section 37: Expiry of provisions of the Parliamentary Standards Act 2009

213. This section repeals section 15 of the 2009 Act which provides for the expiry of sections 3(3) and (4) and 8 to 11 of (and Schedule 2 to) that Act two years after the coming into force of section 8 (subject to a power of extension exercisable by Order). These provisions relate to the Commissioner for Parliamentary Investigations, the functions of that Commissioner, the code of conduct relating to financial interests and the offence of providing false or misleading information for allowances claims. These provisions, save for that containing the offence, are repealed or substantially revised by the other amendments to the 2009 Act.

Section 38: Consequential amendments

214. *Section 38* gives effect to Schedule 5, which makes consequential amendments to the 2009 Act and other Acts.

Schedule 5: Parliamentary standards: consequential amendments

215. *Paragraph 7(3)* and *(4)* of Schedule 5 amends paragraph 18 of Schedule 1 to the 2009 Act which, together with paragraph 17 of that Schedule, separate the IPSA's administration and regulation functions. The IPSA may delegate its administrative functions but not its regulation functions. The payment of MPs' salaries under the new sections 4 and 4A will (as now under the 2009 Act) be an administrative function, whilst the determination of MPs' pay will be a regulation function. The following will also be classed as regulation functions: determining procedures for the publication of allowances claims; determining conditions which must be met before the Compliance Officer and an MP may agree the voluntary repayment of overpaid

expenses; determining procedures for investigations; the appointment and removal of the Compliance Officer; determining a scheme setting out how any costs imposed on an MP as part of a repayment direction are to be calculated; specifying additional matters to be contained in a penalty notice; and preparing guidance in respect of penalty notices.

216. *Paragraphs 8* to *12* of Schedule 5 amend references to the payment of MPs' salaries under resolutions of the House of Commons to the payment of salaries under section 4 of the 2009 Act, and make other amendments as a consequence of new sections 4 and 4A of the 2009 Act.

Section 39: Resettlement grants for MEPs

217. *Section 39* substitutes for the current section 3(1) to (3) of the European Parliament (Pay and Pensions) Act 1979 ("the 1979 Act"), new subsections (1) to (3D). The existing provisions set out the amount payable in the form of a resettlement grant to former MEPs.

218. New section 3(1) of the 1979 Act provides for the IPSA to make a scheme for the paying of an allowance, to those eligible, when they cease to be a MEP.

219. New section 3(2) provides that the IPSA may only make such a scheme if a scheme made under section 5 of the 2009 Act (the MPs' allowances scheme) makes provision for the payment of allowances to those who cease to be MPs on the dissolution of Parliament.

220. New section 3(3) requires the provision made in respect of MEPs to be as equivalent as the IPSA considers practicable to the provision made under the MPs' allowances scheme.

221. New section 3(3A) provides for the scheme and a statement of reasons for making the scheme to be laid before both Houses of Parliament. New section 3(3B) requires the IPSA to publish the scheme and the statement of the reasons for it.

222. New section 3(3C) limits the eligibility for payment of the allowance to those MEPs who either stand down at a European Election or who fail to be re-elected.

223. New section 3(3D) provides that the IPSA may amend or revoke any previous scheme.

224. The existing provisions, and amendments, only apply to those MEPs who have opted-out of the arrangements for payment of MEPs under the single Statute for MEPs (European Parliament Decision 2005/684/EC, Euratom) which came into effect on 14 July 2009 – see section 3(5) of the 1979 Act.

225. *Subsection (3)* omits section 3A of the 1979 Act which provided power for the Leader of the House of Commons to amend by order section 3 so that the amount of grant payable was as equivalent as possible to that payable to MPs .

226. *Subsection (4)* amends the reference to "grant" in section 7(1)(b) of the 1979 Act to "allowance" so as to continue to allow the resettlement payments to be made from the Consolidated Fund.

Section 40: Parliamentary and other pensions

227. *Section 40* gives effect to Schedule 6, which makes provision about pensions for MPs, ministers and certain other office-holders.

Schedule 6: Parliamentary and other pensions

228. The current provisions in relation to MPs' and Ministers' etc pensions are found in the Parliamentary and other Pensions Act 1987 ("the 1987 Act") which makes provision with respect to the Parliamentary Contributory Pension Fund ("the Fund"). The 1987 Act provides that the Leader of House of Commons may make regulations making provision with respect to the application of the assets of the Fund in relation to the provision of pensions for MPs, Ministers and certain other office holders.

229. Schedule 6 provides for the continuation of the Fund. It further provides for the IPSA to make a scheme making provision with respect to the application of the assets of the Fund in relation to the provision of pensions for MPs. The Minister for the Civil Service will be responsible for making a scheme in relation to the provision of pensions for Ministers and other office holders currently covered by the 1987 Act. The IPSA will also be responsible for making a scheme in relation to the overall administration and management of the Fund.

230. Schedule 6 largely replicates the structure of the 1987 Act but with necessary changes given the transfer of responsibility for the oversight of MPs' pensions to a body independent of Government: the IPSA.

Part 1: Parliamentary and Other Pensions

231. *Paragraph 1* of Schedule 6 provides for the Fund to continue.

232. *Paragraph 2* provides that there are to be 10 trustees of the Fund: one person appointed by the IPSA, one person appointed by the Minister for the Civil Service and 8 persons nominated and selected under paragraph 3.

233. *Paragraph 3* provides that the trustees of the Fund must make arrangements for the nomination and selection of member-nominated trustees as provided for in that paragraph.

234. *Paragraph 4* provides that the IPSA may, with the consent of the Treasury, provide for remuneration and allowances to be payable to the trustees out of the assets of the Fund.

235. *Paragraph 5* makes provision in relation to the resignation and removal of the trustees.

236. *Paragraph 6* provides that subject to anything in the administration scheme the trustees may determine their own procedure and that the validity of proceedings of the trustees is not affected by a vacancy among the trustees, or a defect in the appointment of a trustee.

237. *Paragraph 7* makes provision about the powers of the trustees. *Sub-paragraph (1)* provides that the trustees may invest the assets of the Fund. *Sub-paragraph (2)* provides that they may settle or compromise any claim or dispute relating to the Fund, with the consent of the IPSA in relation to the MPs' pension scheme or an administration scheme, and the consent of the Minister for the Civil Service in relation to the Ministers' etc pension scheme. The IPSA must consult the Minister for the Civil Service before consenting to any settlement or compromise in relation to an administration scheme. The Parliamentary Pensions (Consolidation and Amendment) Regulations 1993 (S.I. 1993/3253) ("the 1993 Regulations") currently provide that the trustees may settle or compromise any dispute relating to the Fund with the consent of the Leader of the House of Commons. *Sub-paragraph (4)* also provides that the trustees must prepare a statement of investment principles, having consulted the IPSA and the Minister for the Civil Service. Paragraph 10 of Schedule 1 to the 1993 Regulations currently requires the trustees to consult the Leader of the House of Commons.

238. *Sub-paragraph (1) of paragraph 8* provides that the IPSA may, with the consent of the trustees as required by paragraph 9(1), make a scheme containing provision about the administration and management of the Fund, the indemnification of the trustees (and former trustees) and the proceedings of the trustees. *Sub-paragraph (2)* describes what provisions, in particular, may be included in such a scheme, including by reference to *paragraphs 31* to *33* of the Schedule. Section 2(1) of the 1987 Act currently provides that the Leader of the House of Commons may make provision relating to these matters by regulations, with the consent of the Minister for the Civil Service.

239. *Paragraph 9* provides the procedure for making an administration scheme. *Sub-paragraph (2)* provides that before making such a scheme, the IPSA must consult the Treasury, the Minister for the Civil Service, persons the IPSA considers to represent those likely to be affected, and any other person the IPSA considers appropriate. *paragraph 9(3)* provides that the IPSA must send to the Speaker of the House of Commons for laying before the House of Commons any scheme and a statement of the reasons for making it. Under *sub-paragraph (4)* the IPSA must publish the scheme and statement of reasons.

240. *Paragraph 10* provides for an Exchequer contribution to be paid into the Fund, calculated in accordance with recommendations by the Government Actuary, who is required to make a report to the trustees, the IPSA, the Minister for the Civil Service and the Treasury every three years. Section 3(3) of the 1987 Act currently requires the report to be made to the trustees and the Minister for the Civil Service (further to a transfer of function from the Treasury).

241. In *paragraph 11, sub-paragraph (1)* provides that the IPSA, with the relevant consents, may make provision for determining the Exchequer contribution in respect of any financial year, outside of the procedure described in *paragraph 10*. Under sub-paragraph *(2)*, the IPSA must obtain the consent of the Treasury and the Minister for the Civil Service and, if the Exchequer contribution is less than it would otherwise have been under the procedure set out in paragraph 10, the trustees. Under *sub-paragraph (4)* the IPSA must consult the trustees (where their consent is not otherwise required), the Government Actuary and persons appearing to the IPSA to represent persons likely to be affected by the provision. Under *paragraph 11(5)* the IPSA must send to the Speaker of the House of Commons for laying before the House of Commons any provision and a statement of the reasons for making it, together with any representations made by the trustees. Under *paragraph 11(6)* the IPSA must publish the provision and statement of reasons. This provision replaces section 6(1) of the Ministerial and other Pensions and Salaries Act 1991, which provides that the Leader of the House of Commons may, with the consent of the Treasury, make provision by regulations for determining the Exchequer contribution in respect of any financial year where this will not simply be in accordance with recommendations by the Government Actuary.

242. *Paragraph 12(1)* provides that the IPSA may make a scheme containing provision about the provision of pensions out of the Fund in respect of service as an MP. Under *sub-paragraph (2)* such a scheme may not make provision about the provision of pensions for someone with service as Lord Chancellor. Under *sub-paragraphs (3)* and *(5)* such a scheme may only make provision for someone with service as Prime Minister or Speaker of the House of Commons in respect of service as an MP on or after 28 February 1991. Section 2 of the 1987 Act currently provides that the Leader of the House of Commons may make provision about the provision of pensions in respect of service as an MP (but not for someone with service as Lord Chancellor, and only for the Prime Minister or Speaker of the House of Commons in respect of service as an MP on or after 28 February 1991) by regulations with the consent of the Minister for the Civil Service.

243. *Paragraph 13* defines a person's "service as a member of the House of Commons" by reference to the time that a salary was payable under section 4 of the Parliamentary Standards Act 2009 or, in relation to a time before that section is in force, under resolutions of the House of Commons.

244. *Paragraph 14* describes what provisions, in particular, may be included in MPs' pension schemes, including provisions specified in *paragraphs 24* to *32* of the Schedule. Certain provisions may only be included with the consent of the trustees of the Fund.

245. *Paragraph 15* defines the procedure for making a MPs' pension scheme. *Sub-paragraph (1)* provides that before making such a scheme, the IPSA must consult the Treasury, the Minister for the Civil Service, the trustees, persons the IPSA considers to represent those likely to be affected, the Government Actuary, the Review Body on Senior Salaries and any other person the IPSA considers appropriate. Under *sub-*

paragraph (2), the IPSA must send to the Speaker of the House of Commons for laying before the House of Commons any scheme and a statement of the reasons for making it, together with any representations made by the trustees. Under *sub-paragraph (3)*, the IPSA must publish the scheme and statement of reasons.

246. *Paragraph 16* provides that the Minister for the Civil Service may make a scheme containing provision about the provision of pensions out of the Fund in respect of service as a Minister or other office-holder. *Sub-paragraph (2)* defines the offices concerned, and *sub-paragraph (3)* makes clear that they do not include the Lord Chancellor, Prime Minister or Speaker of the House of Commons. Section 2(1) of the 1987 Act currently provides that the Leader of the House of Commons may make such provision by regulations with the consent of the Minister for the Civil Service.

247. *Paragraph 17* describes what provisions, in particular, may be included in Ministers' pension schemes by reference to *paragraphs 24* to *32* and *34* of the Schedule. Certain provisions may only be included with the consent of the trustees of the Fund.

248. *Paragraph 18* defines the procedure for making a Ministers' pension scheme. *Sub-paragraph (1)* provides that before making such a scheme, the Minister must consult the IPSA, the Government Actuary, the trustees and any other person the Minister considers appropriate. Under *sub-paragraph (2)* the Minister must lay before each House of Parliament any scheme and a statement of the reasons for making it, together with any representations made by the trustees. Under *sub-paragraph (3)* the Minister must publish the scheme and statement of reasons. Section 2(1) of the 1987 Act currently provides that the Leader of the House of Commons may make provision about the provision of pensions for Ministers and other office-holders by regulations, with the consent of the Minister for the Civil Service.

249. *Paragraph 19* makes provision for the protection of accrued rights of scheme members when the IPSA makes a MPs' pension scheme, or where the Minister for the Civil Service makes a Ministers' etc pension scheme. Under *sub-paragraphs (2)* and *(3)* schemes must not make any provision in relation to an accrued right which puts (or might put) a person in a worse position than the person would have been in apart from the provision, unless the trustees of the Fund consent to the scheme making the provision and the person making the new scheme is satisfied that the consent requirements set out in *sub-paragraphs (4)* to *(6)* are met.

250. *Paragraph 20* defines accrued rights.

251. *Paragraph 21* provides that the Minister for the Civil Service may by order modify any enactment or subordinate legislation if he considers it appropriate as a result of any provision of a scheme made by him or the IPSA. Paragraph 13 of Schedule 1 to the 1987 Act (read with section 2 of that Act) currently provides that the Leader of the House of Commons may make such modification by regulations with the consent of the Minister for the Civil Service.

252. *Sub-paragraphs (1)* and *(2)* of *paragraph 22* provide that schemes made by the IPSA or the Minister for the Civil Service can amend or revoke previous schemes made by them.

Part 2: Provisions which may be included in schemes

253. *Paragraph 23* defines relevant service, and provides for the use in Part 2 of the expressions defined in Part 1.

254. *Paragraphs 24* to *34* describe the provisions which may be included in schemes made by the IPSA or the Minister for the Civil Service in accordance with *paragraphs 8(2)(a), 14(1)(a)* and *17(1)(a)* of the Schedule.

Part 3: Amendments, transitional provision etc

255. *Paragraph 35* makes consequential amendments to Part 1 of Schedule 2 to the Pensions (Increase) Act 1971 so that the provisions of that Act continue to apply to pensions payable out of the Parliamentary Contributory Pension Fund.

256. *Paragraphs 36* and *37* make consequential amendments to section 27 of the Parliamentary and other Pensions Act 1972, so that the Minister for the Civil Service can designate provisions in the Ministers' etc pension scheme made under paragraph 16 of Schedule 6 to apply for the purpose of calculating pensions for dependants of the Prime Minister or Speaker of the House of Commons. Section 27 of the Parliamentary and other Pensions Act 1972 currently provides that provisions in the Parliamentary pension scheme can be designated to apply for that purpose by regulations made by the Leader of the House of Commons.

257. *Paragraphs 38* to *41* make amendments to the European Parliament (Pay and Pensions) Act 1979 ("the 1979 Act"). *Paragraph 38* provides that the IPSA may make a scheme containing provision with respect to pensions payable to or in respect of persons who have ceased to be United Kingdom representatives at the European Parliament, but only in relation to those who have opted-out of arrangements for remuneration of MEPs under the single Statute for MEPS (European Parliament Decision 2005/684/EC, Euratom) which came into effect on 14 July 2009 ("opted-out MEPs"). The 1979 Act currently provides that the Leader of the House of Commons may make such provision by order. *Paragraph 38* provides that before making such a scheme, the IPSA must consult the Treasury, the Minister for the Civil Service, persons the IPSA considers represent those likely to be affected, the Government Actuary and any other person the IPSA considers appropriate. The IPSA must send to the Speaker of the House of Commons for laying before both Houses of Parliament any scheme and a statement of the reasons for making it.

258. *Paragraph 39* provides that the IPSA may, with the consent of the Treasury and the Minister for the Civil Service, direct that a block transfer value representing the aggregate value of the accrued pension rights of all United Kingdom Representatives may be paid into an overseas fund or scheme. The 1979 Act currently provides that such a direction may be made by the Leader of the House of Commons by order.

259. *Paragraph 42* makes consequential amendments to the House of Commons Members' Fund and Parliamentary Pensions Act 1981.

260. *Paragraph 43* makes consequential amendments to the Parliamentary and other Pensions Act 1987.

261. *Paragraph 44* provides that, subject to an order made under *section 51* of the Act, the 1993 Regulations (or any other regulations made under the 1987 Act in force immediately before the date specified in an order under *paragraph 44(8)*) will continue to have effect as if they were the MPs', Ministers' etc or administration scheme. This provision will also be subject to the powers of the IPSA and the Minister for the Civil Service under Schedule 6 to make new schemes. *Paragraph 44* also provides that an order under *sections 51* or *52* may provide that provisions in the 1993 Regulations (or any other regulations made under the 1987 Act in force immediately before the date specified in an order under *paragraph 44(8))* that could not otherwise be contained in the MPs', Ministers' etc or administration scheme can continue as if they were contained in those schemes.

262. *Paragraph 45* makes consequential amendments to the Ministerial and other Pensions and Salaries Act 1991.

263. *Paragraph 46* makes consequential amendments to the Pensions Act 2004.

264. *Paragraph 47* makes consequential amendments to the 2009 Act.

265. *Paragraph 48* provides that an order under section 13 of the 2009 Act may make provision mentioned in section 13(6) (provision for transfer schemes) in connection with the changes in responsibilities for the administration scheme and the MPs' pension scheme. An order under section 13(6)(b) or (c) of the 2009 Act does not apply to property, rights and liabilities, or documents and information, held by or on behalf of the trustees of the Fund.

266. *Paragraph 49* provides that, if *paragraph 2* comes into force for the purpose of appointing the trustees of the Fund to be appointed by the IPSA or the Minister for the Civil Service before it comes into force for other purposes, then the trustees who must be consulted under *paragraph 2(1)(a)* or *(b)* are those persons who are trustees by virtue of section 1 of the 1987 Act.

267. *Paragraph 50* makes transitional provision in relation to the trustees, including that the first 8 member-nominated trustees must be selected from those persons who are trustees immediately before the beginning of the transitional period (as defined in *paragraph 50(1)*).

PART 4: TAX STATUS OF MPS AND MEMBERS OF THE HOUSE OF LORDS

Section 41: Tax status of MPs and members of the House of Lords

268. *Section 41* provides that MPs and most members of the House of Lords are to be deemed resident, ordinarily resident and domiciled in the UK ("ROD") for the purposes of income tax, capital gains tax and inheritance tax. This means that they will be liable to pay these taxes in the UK on their worldwide income, gains, and assets regardless of their actual status in the UK, and that they will be unable to access the remittance basis of taxation.

269. The section provides that MPs and peers are deemed ROD for the whole of each tax year in which they are a member of either House (including those tax years in which they are a member for only part of the year). This means that they will be deemed ROD from the start of the tax year in which they become a member of that House and to the end of the tax year in which they cease to be a member. *Subsection (7)* provides that the section applies from the start of the tax year 2010-2011, but under subsection (8)(a) it will only apply in that tax year to MPs who are members of the new Parliament meeting in 2010. *Subsection (9)* defines a tax year for the purposes of inheritance tax as running from 6 April to 5 April (the phrase is already defined in other legislation for the other taxes).

270. *Section 41* applies to a person who has been elected as an MP after they have taken the oath of allegiance at the start of a new Parliament (as they are required to do under the Parliamentary Oaths Act 1866). For the purposes of the section, an MP ceases to be a member when the Parliament to which they were elected has been dissolved or their seat is otherwise vacated (by resignation, death or disqualification).

271. For the purposes of *section 41*, a member of the House of Lords is someone who is entitled to receive a writ of summons. *Subsection (6)(a)* specifically disapplies the provision for members of the judiciary who are disqualified from sitting and voting in the House under section 137 of the Constitutional Reform Act 2005. If such an individual were to leave the House on assuming judicial office during the course of a tax year, or return to the House after retiring during the course of a tax year, they will be deemed ROD for the whole of the tax year in question. *Subsection (6)(b)* disapplies the provision for the Lords Spiritual.

272. *Subsection (10)* provides that any temporary suspension or disqualification from entitlement to receive a writ imposed in the circumstances set out in paragraphs *(a)* or *(b)* are discounted when determining whether a person is entitled to receive a writ of summons (and is therefore a member of the House of Lords for the purposes of the section). While a peer is subject to such temporary suspension or disqualification, the deeming provision would still apply to them.

Section 42: Tax status of members of the House of Lords: transitional provision

273. *Section 42* provides for a period of three months during which members of the House of Lords may give notice in writing to the Clerk of the Parliaments that they are not willing to be subject to the deeming provision in *section 41*, and if they do so their

membership of the House of Lords will end at that point. *Section 41(8)(b)* provides that the deeming provision will only apply to peers who are members of the House of Lords at the end of this transitional period (and so will not apply to any peers who have left under this section before the end of that period). Peers who remain will then be deemed ROD from the beginning of the tax year (6th April 2010).

274. *Subsections (3)* to *(9)* provide that a peer who leaves the House under the transitional provision:

- will be enfranchised to vote in general elections,
- will be ineligible to stand for election to the House of Commons for three years,
- will not, if they were a hereditary peer, be replaced by another hereditary peer (reducing by one the number of hereditary peers remaining in the House under the House of Lords Act 1999),
- may subsequently receive or succeed to a new peerage and once again be entitled to receive a writ of summons to attend the House (if the new peerage is a hereditary peerage, this will apply only if the person is elected to a seat in the House under the House of Lords Act 1999),
- may once again be entitled to receive writs of summons if they become the Earl Marshal or Lord Great Chamberlain.

275. A peer is not entitled to receive a writ of summons if they are a Member of the European Parliament, but they do receive writs of summons once they step down from the European Parliament. Therefore, a peer who is an MEP would not be deemed ROD under *section 41*, but once entitled to receive writs again they would be deemed ROD. *Section 42(10)* allows such MEPs to avoid being deemed ROD in these circumstances by making the transitional provision available to such MEPs in the same way as to those peers currently entitled to receive writs of summons.

PART 5: TRANSPARENCY OF GOVERNMENT FINANCIAL REPORTING TO PARLIAMENT

Section 43: Inclusion in departmental estimates of resources used by designated bodies

276. *Subsection (1)* provides that the section amends the Government Resources and Accounts Act 2000 ("the GRAA 2000").

277. *Subsection (2)* inserts a new section 4A into the GRAA 2000. Its provisions are as follows:

278. New section 4A(1) gives the Treasury powers to give directions regarding how a government department must prepare a Supply Estimate for approval by the House of Commons in respect of a financial year.

279. New section 4A(2) gives the Treasury powers to direct that the departmental Supply Estimate include information relating to resources expected to be used by any body that is a designated body in relation to that department.

280. New section 4A(3) provides that a body is a designated body in relation to a government department either if it is designated by an order made by the Treasury or it falls within a description of a body designated in relation to the department by a Treasury order.

281. New section 4A(4) provides for a body to be designated either for a particular financial year or generally.

282. New section 4A(5) to (8) makes provision in relation to bodies funded out of a devolved Consolidated Fund. Section 4A(5) provides that subsections (6) and (7) apply if the Treasury expect the use of resources by a body in a financial year to involve payments out of a devolved Consolidated Fund to or for the benefit of a body but do not expect the use of resources by the body to involve payments out of the Consolidated Fund of the United Kingdom to or for the benefit of that body. Examples of such bodies would include Sportscotland (an NDPB funded entirely by the Scottish Executive) and the Higher Education Funding Council for Wales (also an NDPB, which provides funding to higher education institutions in Wales and is funded by the Welsh Assembly Government). There is no intention of designating any body that is wholly funded from a devolved Consolidated Fund. If, exceptionally, a UK government department were to make a payment to a body operating in a devolved area and largely funded by a devolved administration, the Treasury plans to agree administrative arrangements that would ensure such a body were not designated.

283. New section 4A(6) provides that if the conditions in section 4A(5) are met the Treasury must notify the relevant government department that the conditions are met and treat the body as though it were not designated for that year.

284. New section 4A(7) prevents the Treasury from making an order designating a body if the conditions in section 4A(5) are met and no order is already in force in relation to that body.

285. New section 4A(8) provides for the Treasury, where appropriate, to consult the Scottish Ministers, the Welsh Ministers or the Department of Finance and Personnel for Northern Ireland before designating a body or a description of a body.

286. New section 4A(9) provides that in determining for any purpose whether a body has a particular relationship with a government department, the fact that a departmental Supply Estimate includes information relating to that body, or departmental resource accounts include information relating to the body, is to be disregarded. This provision is intended to make it clear that designating a body does not of itself alter the existing relationship between that body and the government department.

287. New section 4A(10) provides that an order made by the Treasury under section 4A(3) must be made by statutory instrument.

288. New section 4A(11) provides that a statutory instrument containing such an order will be subject to the negative resolution procedure.

289. New section 4A(12) defines what is meant by 'a devolved Consolidated Fund' (see section 4A(5)).

290. *Subsection (3)* amends section 5(1) of the GRAA 2000. Section 5(1), as amended, will require a government department to include the resources used or acquired, held or disposed of by any designated body when preparing resource accounts.

291. *Subsection (4)* amends section 6(1) of the GRAA 2000. That section requires the Comptroller and Auditor General to satisfy himself of certain matters when examining any resource accounts which he receives from a department. Section 6(1), as amended, will require the Comptroller and Auditor General to satisfy himself, amongst other things, that the financial transactions of the department and the financial transactions of any designated body are in accordance with any relevant authority.

Section 44: Corresponding provision in relation to Wales

292. *Subsection (1)* provides that the section amends Part 5 of the Government of Wales Act 2006 ("GOWA 2006").

293. *Subsection (2)* inserts a new section 126A into the GOWA 2006. Its provisions are as follows:

294. New section 126A(1) gives the Welsh Ministers the power to include information relating to the use of resources by a designated body in a Budget Motion for the financial year.

295. New section 126A(2) provides the Welsh Ministers with the power to designate bodies for these purposes. Ministers can designate individual bodies, or categories of bodies. Designation must be made by order.

296. New section 126A(3) provides for a body to be designated either for a particular financial year or generally.

297. New section 126A(4) requires the Welsh Ministers to obtain the consent of the Treasury before designating any body that they expect will receive funding from a "relevant Consolidated Fund" in a particular financial year. New section 126A(5) defines a "relevant Consolidated Fund" as the UK Consolidated Fund, the Scottish Consolidated Fund or the Consolidated Fund of Northern Ireland.

298. New section 126A(6) requires the Welsh Ministers to consult with the Treasury before designating a body or a description of body, in cases where Treasury consent is not needed but the Welsh Ministers consider it appropriate to consult.

299. New section 126A(7) provides that in determining for any purpose whether a body has a particular relationship with a "relevant person", the fact that the budget motion, or the "relevant person's" resource accounts, include information relating to the body, is to be disregarded. This provision is intended to make it clear that designating a body does not of itself alter the existing relationship between that body and the Welsh Ministers (or other "relevant person").

300. New section 126A(8) provides that an order made by the Welsh Minister under section 126A(2) must be made by statutory instrument.

301. New sections 126A(9) and (10) provides that a statutory instrument containing such an order will be subject to either the affirmative or negative resolution procedure in the Assembly. The choice of procedure will be made by the Welsh Ministers as appropriate in recognition of their key budgetary responsibilities. For instance, the Welsh Ministers may choose to use the affirmative procedure where they are proposing major changes to designated bodies, and it is appropriate for the Assembly to have the opportunity to debate these fully; while the Welsh Ministers may choose the negative procedure in cases where minor or uncontroversial amendments are to be made.

302. *Subsection (3)* provides that the section amends Schedule 8 to the GOWA 2006.

303. *Subsection (4)* inserts a new paragraph 13(1A) to the GOWA 2006. Paragraph 13(1) of Schedule 8 to the GOWA 2006 provides that the Auditor General for Wales must, for each financial year, prepare accounts in accordance with directions given by the Treasury. The new paragraph 13(1A) provides that such directions to prepare accounts may include directions to prepare accounts relating to financial affairs and transactions of persons other than the Auditor General. This would allow the inclusion of information about bodies designated in relation to the Auditor General.

304. *Subsection (5)* amends paragraph 15 of Schedule 8 to the GOWA 2006, which relates to the audit of accounts prepared by the Auditor General. *Subsection (5)* makes consequential amendments to paragraph 15 to allow the auditors of the Auditor General for Wales's accounts to obtain necessary information concerning transactions of designated bodies which are included in those accounts.

305. *Subsection (6)* amends paragraph 17(8) of Schedule 8 to the GOWA 2006 to allow the Auditor General for Wales to have access to documents and financial information relating to the financial affairs of any designated body included in the accounts of the Public Services Ombudsman for Wales.

306. *Subsection (7)* amends Schedule 1 to the Public Services Ombudsman (Wales) Act 2005. Paragraph 16(1) of that Schedule provides that the Ombudsman must, for each financial year, prepare accounts in accordance with directions given to him by the Treasury. *Subsection (7)* inserts a new paragraph 16(1A) to allow such directions to include directions to prepare accounts relating to financial affairs and transactions of

persons other than the Ombudsman. This would allow the inclusion of information about bodies designated in relation to the Ombudsman.

PART 6: PUBLIC RECORDS AND FREEDOM OF INFORMATION

Section 45: Transfer of records to Public Record Office

307. *Section (1)(a)* amends subsection 3(4) of the Public Records Act 1958 ("PRA 1958") to reduce the time within which any public record selected for permanent preservation, and not required for an administrative purpose or other special reason, must be transferred to the Public Record Office or other place of deposit. The period is reduced from 30 years after the creation of the record to 20 years.

308. The remaining provisions of *section 45* allow transitional provisions to be made in connection with the reduction of that period from 30 to 20 years. *Subsection (1)(b)* inserts a new section 3(4A) of the PRA 1958 which provides that, during the 10 years after the commencement of *section 45*, the amended section 3(4) of the PRA 1958 is to be read subject to any transitional provisions made by order under *subsection (2)* .

309. *Subsection (2)* allows the Lord Chancellor, by order, to make transitional arrangements relating to the reduction from 30 to 20 years. *Subsection (3)* enables any such order to make provision about the time within which particular records must be transferred and to make different provision for records of different descriptions.

310. *Subsections (4)* and *(5)* provide that a statutory instrument containing such an order is subject to the negative resolution procedure.

Section 46: Freedom of information

311. *Subsection (1)* gives effect to Schedule 7, which amends the Freedom of Information Act 2000 ("FOIA 2000").

312. The remaining provisions of *section 46* allow transitional provisions to be made in connection with the amendments to the FOIA 2000 that reduce from 30 to 20 years the period within which certain exemptions from disclosure apply. *Subsection (2)* gives the Secretary of State power, by order, to make transitional arrangements relating to those amendments. *Subsection (3)* enables any such order to make provision about the time when the exemptions cease to apply, and to make different provision for records of different descriptions. *Subsections (4)* and *(5)* provide that a statutory instrument containing such an order is subject to the negative resolution procedure.

Schedule 7: amendments of Freedom of Information Act 2000

313. *Paragraph 2* amends section 2(3) of the FOIA 2000, to make the exemption in section 37 of the FOIA 2000 an absolute exemption insofar as it relates to information about communications falling within one of the first three categories of information created by *paragraph 3*.

314. *Paragraph 3* amends section 37(1)(a) of the FOIA 2000, which creates a qualified exemption from disclosure for information relating to communications with Her Majesty, other members of the Royal Family, and the Royal Household. The amendment brings within the exemption information relating to five categories of communication:

- with the Sovereign (new section 37(1) (a)).
- with the heir to the Throne or the second in line to the Throne (new section 37(1) (aa)).
- with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne (new section 37(1) (ab)).
- with other members of the Royal Family, except when acting on behalf of a person falling within one of the first three categories (new section 37(1)(ac)).
- with the Royal Household, except when acting on behalf of a person falling within one of the first three categories (new section 37(1)(ad)).

315. FOIA 2000 provides that certain exemptions from disclosure do not apply to information contained in a "historical record". *Paragraph 4* amends the definition of this term in section 62(1) of the FOIA 2000 so that records become "historical records" after 20 years rather than 30 years. *Sub-paragraph (3)* provides that, for 10 years after *paragraph 4* is commenced, the reduction from 30 to 20 years is subject to any transitional order made under *section 46(2)*.

316. *Paragraph 5* amends section 63 of the FOIA 2000, which specifies which exemptions from disclosure can apply to "historical records".

317. *Sub-paragraphs (2) and (3)* reduce from 30 years to 20 years the maximum duration of the exemptions in sections 30(1) (investigations and proceedings conducted by public authorities), 32 (court records), 33 (audit functions), 35 (formulation of government policy) and 42 (legal professional privilege) of the FOIA 2000.

318. *Sub-paragraph (4)* inserts new subsections into section 63 of the FOIA 2000 as follows:

a. New subsections (2A) and (2B) reduce to 20 years the period after which the exemption in section 36 of the FOIA 2000 (prejudice to effective conduct of public affairs) ceases to apply. However, the reduction does not apply to section 36(2)(a)(ii) (information which would or would be likely to prejudice the work of the Executive Committee of the Northern Ireland Assembly) and, in so far as disclosure would prejudice the effective conduct of public affairs in Northern Ireland, section 36(2)(c).

b. New subsections (2C) and (2D) maintain at 30 years the maximum duration of the exemptions in sections 28 (relations within the UK), 43 (commercial interests), 36(2)(a)(ii) (information which would or would be likely to prejudice the work of the Executive Committee of the Northern Ireland Assembly) and 36(2)(c), in so far as disclosure would prejudice the effective conduct of public affairs in Northern Ireland.

c. New subsections (2E) and (2F) create time limits after which the exemptions in the new sections 37(1)(a) to (ad) of the FOIA 2000 , inserted by *paragraph 3*, no longer applies. The exemption ceases to apply 20 years after the creation of the record in which the information is contained, or 5 years after the death of the relevant member of the Royal Family, whichever is longer. In the case of communications with the Royal Household falling within the fifth category, the relevant member of the Royal Family for these purposes is the Sovereign reigning when the record in question was created.

319. *Paragraph 6* inserts a new section 80A into FOIA 2000, providing that the amendments made by *Schedule 7* will not apply to information held by the Northern Ireland Assembly, any Northern Ireland department and any Northern Ireland public authority. The FOIA 2000 will apply to these bodies as if the amendments had not been made.

PART 7: MISCELLANEOUS AND FINAL PROVISIONS

Section 47: Section 3 of the Act of Settlement

320. *Subsection (1)* provides that the repeal (made by section 18(7) of the Electoral Administration Act 2006) of an entry in Schedule 7 to the British Nationality Act 1981 (which applied to section 3 of the Act of Settlement) applied only in relation to membership of the House of Commons, and to anything from which a person is disqualified by virtue of a disqualification from membership of the House of Commons. This confirms that the repeal did not apply in relation to membership of the House of Lords, the Privy Council and certain offices under the Crown.

321. *Subsection (2)* provides that the repeal had this effect from the coming into force of section 18 of the Electoral Administration Act 2006.

Section 48: Parliamentary elections: counting of votes

322. *Section 48* of the Act amends the parliamentary elections rules ("the rules") contained in Schedule 1 to the Representation of the People Act 1983 so as to require a returning officer to take reasonable steps to begin counting the votes given on the ballot papers in a parliamentary election as soon as practicable within four hours of the close of poll (polling closes at 10pm). It does so by inserting a new rule 45(3A) in the Rules (*subsection (3)(a)*). *Subsection (2)* amends rule 44 of the Rules: the effect is that the returning officer must have regard to the new rule 45(3A) duty when (as required by rule 44(1)) making arrangements to commence the counting of votes as soon as practicable following the close of the poll. *Subsection (3)(b)* supplements the new rule 45(3A) duty by requiring the Electoral Commission to produce guidance for returning officers on the new duty.

323. Circumstances – such as local geography – may dictate that it is not possible to begin counting the votes given on ballot papers within four hours of the close of the poll in a parliamentary election. Accordingly, *subsection (4)* inserts a new rule 53ZA in the Rules, requiring a returning officer who has not been able to start the count within the four hour period to publish a statement, within 30 days of the poll date. This must

state when the count started, describe the steps taken for the purpose of attempting to begin counting the votes within the four hour period, and explain why the returning officer was unable to start counting the votes given on ballot papers within that period. Under this new rule the returning officer is also required to deliver the statement to the Electoral Commission within the same 30 day period. The effect of paragraphs (3) and (4) of the new rule is that the Commission must list those constituencies that did not start the count within four hours of the close of poll in any report they produce under section 5 of the Political Parties, Elections and Referendums Act 2000 on the conduct of the election.

Section 49: Meaning of "Minister of the Crown"

324. *Section 49* provides that the term "Minister of the Crown" in the Act will have the same meaning as provided in the Ministers of the Crown Act 1975. This includes Secretaries of State but also, for example, the Attorney General, the Lord Chancellor and the Minister for the Civil Service.

Section 50: Financial provision

325. *Section 50* provides that any expenditure incurred by a Minister of the Crown by virtue of the Act and other expenditure attributable to the Act can be paid for out of money provided by Parliament.

Section 51: Power to make consequential provision

326. *Section 51* contains a power to make changes to primary or secondary legislation in consequence of the Act by order. *Section 51(1)* provides that the power can be exercised by a Minister of the Crown, or two or more Ministers acting jointly.

327. *Subsection (2)* provides that an order may amend, repeal or revoke provision in primary or secondary legislation and may include transitional, transitory or saving provisions. An order under this section must be made by statutory instrument (*subsection (4)*). If it amends primary legislation, an order will be subject to the affirmative resolution procedure (*subsection (5)*). Any other order will be subject to negative resolution procedure (*subsection (6)*).

Section 52: Extent, commencement, transitional provision and short title

328. *Subsection (1)* provides that any other amendment or repeal made by the Act will have the same extent as the Act or relevant part of the Act to which it relates.

329. *Subsection (2)* provides that the Act, with the exception of those provisions set out in *subsection (3)*, will come into force on a day which a Minister of the Crown or two or more Ministers acting jointly, decide by order and that different provisions may be brought into force at different times.

330. *Subsection (3)* provides that *sections 41, 42* and Part 7 of the Act will come into force on the day the Act is passed.

331. *Subsection (4)* provides that a Minister of the Crown or two or more Ministers acting jointly may make an order making transitional, transitory or saving provisions in relation to the commencement of the provisions of the Act.

332. *Subsection (5)* provides that an order under *subsections (2)* or *(4)* must be made by statutory instrument.

333. *Subsection (6)* sets out the short title of the Act.

COMMENCEMENT DATES

334. *Sections 41, 42*, and the provisions of Part 7 of the Act came into force on the day it was passed (8 April 2010). The other provisions come into force on the day appointed by a Minister of the Crown by order made by statutory instrument; and different days may be appointed for different purposes.

HANSARD REFERENCES

335. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament. (The Act was introduced in the fourth session and carried over to the fifth session.)

Stage	Date	Hansard reference
House of Commons **Fourth session**		
Introduction	20th July 2009	Vol. 496 Col. 602
Second Reading	20th October 2009	Vol. 497 Col. 799
Committee	3rd November 2009 4th November 2009	Vol. 498 Col. 796 Vol. 498 Col. 873
House of Commons **Fifth session**		
Introduction	19th November 2009	Vol. 501 Col. 141
Second Reading	19th November 2009	Vol. 501 Col. 141

Stage	Date	Hansard reference
Committee	19th January 2010 26th January 2010 1st February 2010 9th February 2010	Vol. 504 Col. 187 Vol. 504 Col. 689 Vol. 505 Col. 47 Vol. 505 Col. 790
Report	2nd March 2010	Vol. 506 Col. 829
Third Reading	2nd March 2010	Vol. 506 Col. 900
House of Lords		
Introduction	3rd March 2010	Vol. 717 Col. 1452
Second Reading	24th March 2010	Vol. 718 Col. 958
Committee	7th April 2010	Vol. 718 Col. 1609
Report	7th April 2010	Vol. 718 Col. 1651
Third Reading	7th April 2010	Vol. 718 Col. 1651
House of Commons		
Commons Consideration of Lords amendments	8th April 2010	Vol. 508 Col. 1203
Lords Consideration of Commons' amendment	8th April 2010	Vol. 718 Col. 1734
Royal Assent – 8th April 2010	**House of Lords Hansard Vol. 718 Col. 1738**	
Royal Assent – 8th April 2010	**House of Commons Hansard Vol. 508 Col. 1256**	

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