



House of Lords
House of Commons

Joint Committee on the Draft
Deregulation Bill

Draft Deregulation Bill

Report

Session 2013–14



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Report, together with formal minutes

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The Joint Committee on the Draft Deregulation Bill

The Joint Committee on the Draft Deregulation Bill was appointed by the House of Commons on 10 July 2013 and by the House of Lords on 17 July 2013 to examine the Draft Deregulation Bill and to report to both Houses by 16 December 2013.

Membership

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Baroness Andrews (Labour)
Lord Mawson (Crossbench)
Lord Naseby (Conservative)
Lord Rooker (Chair) (Labour)
Lord Selkirk of Douglas (Conservative)
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HOUSE OF COMMONS

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Publications

The Report of the Committee was published by The Stationery Office by Order of both Houses. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-deregulation-bill/written-evidence/>

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Summary

The draft Deregulation Bill was announced in the Queen’s Speech in May 2013 and published in July 2013. It is one element of the Government’s deregulatory agenda, sitting alongside other initiatives such as the Red Tape Challenge and the One-in, Two-out policy. The Foreword to the draft Bill describes it as “the latest step in the Government’s ongoing drive to remove unnecessary bureaucracy that costs British businesses millions, slows down public services ... and hinders millions of individuals in their daily lives”.¹

The draft Bill has three broad purposes: to make provision for the reduction of burdens on businesses, other organisations and individuals in a wide range of policy areas (clauses 1 to 49); to introduce a new order-making power to enable a Minister by order to repeal legislation “no longer of practical use” (clauses 50 to 57) (“the order-making power”); and, to place a duty on certain non-economic regulatory bodies to have regard to the desirability of promoting economic growth when exercising regulatory functions (clauses 58 to 61) (“the growth duty”). We welcome the opportunity to undertake pre-legislative scrutiny on the draft Bill.

Order-making power

Clause 51 of the draft Bill enables a Minister to provide by order for legislation (primary and subordinate) to cease to apply “if the Minister considers that it is no longer of practical use”. Its purpose, we were told, is to provide a mechanism for the statute book to be rationalised.² Some statutory safeguards are provided for: the Minister has to consult the relevant Law Commission and other persons, as he considers appropriate, and the order cannot be made if the draft order is rejected by either House. We received a range of evidence objecting to this proposed power. It was argued that the power was too broad and the safeguards inadequate; that the proposed Parliamentary procedure (draft negative procedure) was inappropriate and added yet another procedure to the existing raft of strengthened procedures for Parliamentary scrutiny of subordinate legislation; that using secondary legislation to repeal primary legislation carried with it the risk of judicial review and therefore legal uncertainty, and also inhibited Parliamentary scrutiny because Parliament could only accept or reject (and therefore cannot amend) subordinate legislation; and, finally, that the power was in any event unnecessary because the Law Commissions already undertook work to rid the statute book of obsolete legislation through their statute law repeal (SLR) programme. In the light of these arguments and the evidence we received, we have concluded that the order-making power should be removed from the Bill and recommend accordingly. We also recommend that the provisions in Schedule 16 be referred to the Law Commissions for confirmation, before the Committee stage of the Bill in the first House, that they are “no longer of practical use”.

We recognise, however, that the Government’s objective to rid the statute book of obsolete legislation cannot be achieved at the rate they are looking for if the Law Commissions’ SLR programme continues at its current pace. The Law Commissions, responding to this point,

1 Foreword, Cm 8642.

2 Evidence from the Government (Delegated Powers Memorandum),

have offered to make improvements through more frequent and more responsive SLR Bills. We welcome this development and recommend that consideration should be given to having an annual SLR Bill.

Even with these improvements, we acknowledge that there may be occasions when the Law Commissions' SLR programme does not coincide with the Government's legislative repeal plans, and the two Houses may take the view that an alternative mechanism is justified. If this is the case, we would propose that an order-making power which enables a Minister by order to repeal legislation "no longer of practical" should be created by way of amendment to the Legislative and Regulatory Reform Act 2006 ("the 2006 Act"). By adopting this approach—amendment of the 2006 Act rather than creation of a new power under the Deregulation Bill—a strengthened Parliamentary scrutiny procedure, founded on existing statutory provision, would be applied, thereby meeting some of the principal objections to the proposal in the draft Bill.

Finally, we considered other provisions in the draft Bill which have the effect of reducing Parliamentary scrutiny and make recommendations in respect of a number of clauses including, for example, that clause 7 on suppliers of fuel and fireplaces should, in its current form, be removed from the Bill.

Growth duty

The draft Bill introduces a new duty on regulators to "have regard to the desirability of promoting economic growth" when exercising their regulatory function. We welcome this "growth duty" on regulators, and the Minister's assurance that the duty will not take precedence over a regulator's principal function nor compromise its independence. However, we encourage the Government to review carefully the list of regulators to which the growth duty applies, to ensure that any risks to the standing of the regulator are identified before the duty is introduced.

We conclude that if the growth duty is thoughtfully applied by regulators, it could lead to less burdensome regulation for some businesses in the future.

Rights of way

The main purpose of clauses 12 to 18 and Schedule 6 ("the rights of way clauses") is to implement a package of reforms developed by the Stakeholder Working Group (SWG), a body appointed by Natural England and the Department for the Environment, Food and Rural Affairs in 2008 to find a way to improve procedures for recording pre-1949 rights of way. Rights of way are highly contentious, and we commend the SWG for their achievement in reaching a consensus and urge the Government to show leadership and balance in taking these provisions forward. Some of the evidence we received gave cause for concern about the pressures that the reform may place on local authorities and we ask the Government to ensure that the impact of the proposals on local authorities is fully assessed.

A number of witnesses suggested additions to the provisions in the draft Bill, in particular new provision to re-classify Byways Open to All Traffic (BOATs) and Unclassified County Roads (UCRs) as Restricted Byways and closed to vehicular traffic. Others called for root and branch reform. We draw these wider issues to the attention of the Government and,

given the public interest, urge them to take action to meet the concerns expressed.

Other provision

As part of our scrutiny of the wider provisions we considered the Government's consultation process. We conclude that, in some cases, the consultation was inadequate and in particular recommend that the Government review their consultation process on clauses 9, 28 and 40: we welcome the Minister's commitment to follow our recommendations on this matter.

We also examined the consequences of some clauses and, while not drawing conclusions on whether or not they should be included in the future Bill, set out our findings and encourage the Government to take full account of these when considering the content of the Bill.

Our reflection on future deregulation

It was surprising to us that the evidence submitted to our inquiry appeared to express disappointment that the draft Bill did not have more meaningful proposals to really tackle the challenges of deregulation which we all recognise are at the heart of many of the problems facing the UK economy. We would hope that this is the first of several Bills because deregulation can be achieved without jeopardising key issues such as health and safety, human rights and equality of opportunity—all of which reflect the true values of our society.

1 Introduction and Background

The Government's Regulatory Reform Agenda

1. The draft Deregulation Bill was announced in the Queen's Speech in May 2013 and published in July 2013.³ It is one element of the Government's deregulatory agenda which also includes the Government's Red Tape Challenge (RTC) and the policy of One-in, Two-out (formerly One-in, One-out), the purpose of which "is to lighten the load that the state places on business, the voluntary sector and individuals in this country".⁴

Overview of the draft Deregulation Bill

Purpose

2. In the Foreword to the draft Bill, it is described as "the latest step in the Government's ongoing drive to remove unnecessary bureaucracy that costs British businesses millions, slows down public services ... and hinders millions of individuals in their daily lives".⁵ The long title of the draft Bill indicates three purposes:

- To make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals;
- To make provision for the repeal of legislation which no longer has practical use;
- To make provision about the exercise of regulatory functions.

A portmanteau bill

3. The draft Bill has 65 clauses and 16 Schedules, most of which consist of several parts, and the clauses are split into 15 subject areas. It is a portmanteau bill (in the sense of a Bill covering a very wide range of policy areas), rightly described by the Minister, the Rt Hon. Ken Clarke MP, as "a slight mountain of a Bill".⁶ It covers an extraordinary range of policy areas, involving 10 ministerial departments, under the co-ordination of the Cabinet Office, which include: the Department for Business, Innovation and Skills (BIS), the Cabinet Office, the Department for Communities and Local Government, the Department for Culture, Media and Sport (DCMS), the Department for Education, the Department for Environment, Food and Rural Affairs, the Department of Energy and Climate Change (DECC), the Home Office, the Ministry of Justice and the Department for Transport. In addition, HM Revenue and Customs,⁷ the Health and Safety Executive,⁸ the Government Equalities Office⁹ and the Insolvency Service¹⁰ have interests in the draft Bill. As a result of

3 Cm 8642.

4 Q 511 [Rt Hon. Oliver Letwin MP]

5 Foreword, Cm 8642.

6 Q 517.

7 A non-Ministerial department.

8 An Executive Non-departmental Public Body of the Department for Work and Pensions.

9 Part of DCMS.

the multiplicity of Government departments involved in the Bill, there is no single ministerial lead. Instead, the Bill will be led by two Cabinet Office ministers, the Rt Hon. Ken Clarke MP, Minister without Portfolio, and the Rt Hon. Oliver Letwin MP, Minister for Government Policy, with the Rt Hon. Michael Fallon MP, Minister for Business and Energy in BIS and DECC also leading on the growth duty.

4. The complexity and significance of the individual provisions are also wide-ranging. Some are less controversial and attracted few or no submissions in response to our Call for Evidence (such as provision relating to sellers of knitting yarn (clause 8) and removal of the obligation under the Destructive Imported Animals Act 1932 and associated secondary legislation to notify authorities of the presence of grey squirrels (Schedule 11)). Others are controversial and provoked a great deal of comment (such as the new power to enable Ministers, by way of an order made by statutory instrument, to disapply legislation “no longer of practical use” (clauses 50 to 57) (“the order-making power”), the new growth duty (clauses 58 to 61) (“the growth duty”) and the rights of way provisions (clauses 12 to 18)).

Procedure of the Committee

Evidence gathering

5. The Joint Committee was appointed on 17 July 2013, the day before the beginning of the House of Commons’ summer recess. We met the same day and a Call for Evidence was agreed (set out in Appendix 2 to this Report) in response to which over 300 written submissions were received. In addition, we received evidence from a number of Parliamentary committees: the Lords Delegated Powers and Regulatory Reform Committee, the Commons Regulatory Reform Committee, the Joint Committee on Human Rights, the Commons Education, Transport and Justice Committees, the Lords Communications Committee, and the Speaker’s Committee on the Electoral Commission. The submissions from the committees are set out in Appendix 5 to this Report. We also received submissions from Baroness Jay of Paddington and Professor the Lord Norton of Louth.

6. After a meeting of informal discussion with Government officials, we began taking formal oral evidence on 16 October. We heard evidence from 13 panels of witnesses, involving 51 people. Our final evidence session was on 6 November, when we heard from three Ministers: the Rt Hon. Kenneth Clarke MP, the Rt Hon. Oliver Letwin MP and the Rt Hon. Michael Fallon MP.

Length of the inquiry

7. We are aware that 12 weeks is regarded as a minimum period for a pre-legislative scrutiny committee inquiry. We note, for example, that in 2009, in response to a report of the Lords Constitution Committee, the (then) Leader of the House of the Lords under the previous Government, Baroness Royall of Blaisdon, said: “The Government agrees on the importance of allowing as much time as possible for pre-legislative scrutiny, with a

minimum of 12 weeks as an objective”;¹¹ and, more recently, in March 2013, the Joint Committee on the draft Care and Support Bill drew to the attention of both Houses of Parliament “the importance, when planning pre-legislative scrutiny of draft Bills, of agreeing a timetable which will give the Joint Committee an adequate opportunity to carry out its task”.¹² We agree. **We take the view that, whilst the 12 week timetable may be regarded as a minimum starting point, a longer deadline should be agreed if, on a case by case basis, it is judged necessary in order to allow a committee to carry out its pre-legislative functions effectively. A deadline longer than the minimum would have been appropriate with regard to the draft Deregulation Bill given the range of issues covered by the draft Bill and the number of Government departments involved.**

8. Whilst we recognise that, on this occasion, we have had the advantage of the summer and conference recesses in which to gather written submissions prior to taking oral evidence, nonetheless, for a draft Bill of such complexity and which ranges over such a diversity of policy areas, the deadline of 16 December 2013 seems to us to have been disproportionately tight. Our view is reinforced by Mr Letwin’s statement, in evidence to us on 6 November 2013, that the Government intend the final Bill to be a “carry-over” bill (that is, a bill which can be carried over from one session to the next) and not one, therefore, subject to the usual pressures caused by the end of session deadline. **Given that it is the Government’s intention that this should be a carry-over Bill and that, according to Mr Letwin, there is “plenty of time”¹³ to carry out further consultation if recommended by the Joint Committee, we question why a longer pre-legislative scrutiny inquiry period was not agreed.**

The Committee’s approach

9. Pre-legislative scrutiny can be undertaken in a variety of ways and lead to a variety of outcomes. Some committees concentrate on the precise wording of all or some provisions and, having gone through them line by line, make recommendations for change by way of amendments; others take a broader-brush, narrative approach, looking at the underlying policy and policy-formation processes more generally. Because of the limited time available, we have adopted the latter approach, focusing on what we regard as the principal points of contention within the draft Bill. Furthermore, we decided from the outset that we should concentrate on proposals in the draft Bill and not on proposals for additions to the Bill. We note, for example, that the Speaker’s Committee on the Electoral Commission has proposed amendments to the Political Parties, Elections and Referendums Act 2000 and the Local Democracy, Economic Development and Construction Act 2009.¹⁴ The Local Government Association (LGA) suggested an amendment to abolish a legal duty on local authorities to publish statutory notices in local newspapers,¹⁵ and the OCR Examination Board proposed legislative reform so as to extend the range of Further Education College courses funded by the Higher Education Funding Council England.¹⁶ Suggestions also

11 Government response to a report of the Lords Select Committee on the Constitution on Pre-legislative Scrutiny (21st Report, Session 2008-09, HL Paper 160).

12 Report of the Joint Committee on the draft Care and Support Bill, Session 2012-13, HL Paper 143 and HC 822, para 6.

13 Q 542

14 Written evidence from the Speaker’s Committee on the Electoral Commission. Printed in Appendix 5 to this Report.

15 Written evidence from the LGA, para 35.

16 Written evidence from the OCR Examination Board.

included those made by the Mayor of London,¹⁷ and the Compulsory Purchase Association.¹⁸ We have not been able to investigate these or any other suggestions for additional provisions, save that, in Chapter 4 we refer to additional provisions in the context of the rights of way clauses.

Structure of the report

10. We regard the draft Bill as being comprised of three main components, reflecting the three purposes identified in the long title: the order-making power (clauses 50 to 57 and Schedule 16); the growth duty (clauses 58 to 61); and, the miscellany of provisions contained in clauses 1 to 49 (and associated Schedules) of the draft Bill. Chapters 2 and 3 cover the first two components, and Chapters 4 (rights of way clauses) and 5 (other provision) the third.

11. In selecting the policy areas to include in Chapter 5, we first looked at the evidence we received to gauge which provisions appeared to cause greatest concern. We then considered whether, in formulating these ostensibly controversial proposals, the Government had undertaken adequate consultation in advance of their inclusion in the draft Bill so as to enable them to make informed decisions about the proposals, either taking into account objections raised or offering good reasons why not. For some provisions (for example, clause 9 on insolvency) we found the consultation carried out by the Government to be inadequate. As a result, we encourage the Government to review critically the extent of their consultation on all clauses before the Bill is introduced to Parliament. We also asked whether the provisions were deregulatory in character and therefore warranted being included in a Deregulation Bill. Not surprisingly, we discovered that some provisions were more deregulatory than others.

12. The final chapter, Chapter 6, lists our recommendations and conclusions.

Devolution issues

13. The implications of devolution overlie the complexity of the draft Bill. Not only does the draft Bill involve a mixture of laws, some of which form part of UK-wide law, some part of the law of England and Wales and Scotland, and some part of the law of England and Wales only, but some proposals have limited application within their relevant jurisdiction (so, for example, the proposals in relation to apprenticeships form part of the law of England and Wales but apply to English apprenticeships only).

14. We sought assurance from the Government that the correct procedures (as set out, for example, in the Sewel Agreement in the case of Scotland), in terms of liaising with the devolved administrations and agreeing Legislative Consent Motions where needed, were being followed. We were assured that they were.¹⁹

¹⁷ Written evidence from the Mayor of London.

¹⁸ Written evidence from the Compulsory Purchase Association.

¹⁹ QQ 20 and 21

Acknowledgements

15. We thank all those who assisted us in our work: those who submitted written evidence and other materials, and attended oral evidence sessions; the Parliamentary committees who offered us their views; and also the Government officials who responded to our regular requests for further information.

Joint Committee interests

16. The membership and declared interests of the Joint Committee are set out in Appendix 1 to this Report.

Abbreviations

17. A list of abbreviations is set out in Appendix 7.

2 Order-Making Power and other provisions relating to Parliament

Introduction

18. In this Chapter we consider provisions in the draft Bill which appear to have the effect of reducing the scrutiny role of Parliament and increasing the power of the executive. We are principally concerned with what has emerged as one of the most controversial aspects of the draft Bill: the order-making power contained in clauses 51 to 57. A number of other provisions in the draft Bill have the effect of reducing Parliamentary scrutiny in specific policy areas and we consider these briefly as well.

19. To explain the order-making power, in addition to the information contained in the Explanatory Notes accompanying the draft Bill, the Government provided a delegated powers memorandum (“the Memorandum”) which sought to explain both this and other order-making powers included in the draft Bill and the Minister, the Rt Hon. Kenneth Clarke MP, wrote to the Joint Committee on two occasions, 5 and 11 November 2013, to offer further explanation. These letters are set out in Appendix 6 to this Report

Order-making power in the draft Bill

Clause 51

20. Clause 51 of the draft Bill enables a Minister to provide by order for legislation to cease to apply “if the Minister considers that it is no longer of practical use”. According to the Memorandum, its purpose is to enable the statute book to be rationalised. Mr Clarke described the new power as providing “a quick and tidy dustbin into which we can take clutter out of the statute book and get rid of it”.²⁰

21. “Legislation” under clause 51 includes both primary legislation (that is, Acts of Parliament) and subordinate legislation (also known as secondary or delegated legislation) (clause 51(3)). The power is therefore a Henry VIII power.²¹ The phrase “no longer of practical use” is not defined although the Explanatory Notes to the draft Bill suggest that the main reasons for using the power would be: that the legislation was passed for a limited purpose which has now been achieved; that it has been superseded by other legislation; or, that the legislation regulates an activity which, as a result of social or economic development, no longer takes place.²²

20 Q 533

21 A Henry VIII clause is a provision in a Bill which “enables primary legislation to be amended or repealed by subordinate legislation, with or without further Parliamentary scrutiny”: House of Lords Select Committee on the Scrutiny of Delegated Powers, Session 1992-92, HL 57, para 10. The clauses are named after Henry VIII because of the Statute of Proclamations 1539 which gave the King power to legislate by proclamation.

22 Para 212. Repeated in the Memorandum, para 323.

Safeguards

22. Recognising that it may be contestable whether a piece of legislation is “no longer of practical use” and that the question “does not invariably have an obvious answer”,²³ the Memorandum explains that there are statutory safeguards contained in the draft Bill to prevent misuse:

- “in such cases as the Minister considers appropriate”, the Minister must consult the relevant Law Commission and he must also “consult such other persons as the Minister considers appropriate” (clause 54(1));
- if that consultation leads the Minister to take the view that the proposal consulted upon needs to be amended, then the Minister must undertake further consultation “as the Minister considers appropriate” (clause 54(2));
- if, after consultation under clause 54(1) or (2), the Minister considers it appropriate to proceed, then he must lay before Parliament a draft of the order and an explanatory document (clause 55(1));
- the Minister cannot make an order in the terms of the draft order if “either House of Parliament so resolves” within 40 days of the date of laying (clause 56(2));
- if during the 40-day period, a committee of either House charged with reporting on the draft order recommends that the order is not made, the Minister may not make an order in the terms of the draft order unless the recommendation is, in the same session, rejected by resolution of that House (clause 56(3) and (4)).

Devolution

23. Clause 52 requires that, if an order contains provision within the legislative competence of a devolved Parliament or Assembly, the relevant Minister or department in the devolved administration must be consulted and consent to the proposed order. The point was put to us that consultation and the requirement to consent should extend to the Parliament or Assembly, as appropriate. David Melding AM, Chair of the Constitutional and Legislative Affairs Committee of the National Assembly for Wales said: “We strongly believe that there would be much greater democratic legitimacy if the UK Government were required to obtain the consent of the National Assembly, rather the Welsh Ministers ...”.²⁴ Evidence from the Solicitor to the Scottish Parliament also noted that the clause “does not appear to envisage any role for the Scottish Parliament”.²⁵ In his letter dated 11 November 2013, Mr Clarke confirmed his awareness of the issue and said that “consultation with the devolved administrations is continuing and we will consider the appropriate level of consent in light of that engagement”.²⁶

23 Memorandum, para 326.

24 Written evidence from David Melding AM, Chair, Constitutional and Legislative Affairs Committee, National Assembly for Wales.

25 Written evidence from Lynda A Towers, Solicitor to the Scottish Parliament.

26 Letter from Mr Clarke to the Joint Committee, 11 November 2013, printed in Appendix 6 to this Report.

Schedule 16

24. Schedule 16 to the draft Bill provides for the treatment of specific legislation which is considered to be no longer of practical use. In addition to disapplying the legislation within it, it provides an indication of the sorts of provisions which are likely to be disapplying using the order-making power.²⁷ It covers a wide range of policy areas, including companies, industry, energy, transport, environment, animals and food, education and the criminal law—inclusion depends not on the subject matter of a particular provision but that it is no longer being of practical use.

Objections to the order-making power

25. We received a significant amount of evidence from a range of different witnesses in which objections to the proposed order-making power were raised. They can be classified into four themes:

- that the power is too broad (that is, its scope is too broad and lacks objective tests) and not subject to adequate safeguards;
- that, even if the power could be limited satisfactorily and subject to appropriate safeguards, the proposed procedure is (i) subject to an inappropriate level of Parliamentary scrutiny (draft negative procedure) and (ii) adds yet another procedure to the existing raft of strengthened procedures for Parliamentary scrutiny;
- further, using secondary legislation to repeal primary legislation, instead of using primary legislation, (i) carries with it the risk of judicial review and therefore legal uncertainty, and (ii) inhibits the scrutiny role of Parliament in that Parliament cannot amend secondary legislation but only accept or reject it; and,
- finally, that the power is, in any event, unnecessary because (i) the function with regard to primary legislation is already carried out by the Law Commissions, and (ii) it is unnecessary for secondary legislation because repeal can, in almost all instances, be made by statutory instrument under the power which enabled the secondary legislation which is to be revoked to be made in the first place.

The power is too wide?

Width of the power

26. Lord Norton of Louth described the order-making power as “of major constitutional significance” and said that he could “think of nothing comparable in the terms of the broad powers that are conferred on Ministers to get rid of Acts with relatively limited Parliamentary scrutiny”,²⁸ and later referred in oral evidence to the proposed power as “extreme”.²⁹ As for the expression “no longer of practical use”, since it is not defined in the

²⁷ Explanatory Notes, para 213.

²⁸ Q 469

²⁹ Q 473

draft Bill it was, he argued, “whatever the Minister wishes it to mean”.³⁰ The Lords Delegated Powers and Regulatory Reform Committee (DPRRC) described the test (“no longer of practical use”) to be applied to the power as “startlingly wide and vague”, concluding that they were “strongly of the view” that the order-making power was “inappropriate”.³¹

27. Other witnesses with a less direct interest in the process relating to the proposed order-making power also expressed their doubts. For example, the Joint Committee on Human Rights referred to the provision as being “of extraordinary breadth”;³² the Federation of Small Businesses (FSB) supported the development of a mechanism for clearing out the statute book but thought that the power “could be interpreted very widely” and that applicability of the provision was “largely at the Minister’s discretion”.³³ R3, a representative body for insolvency practitioners, commented that the power would “effectively repeal legislation by executive diktat rather than Parliamentary scrutiny, which risks undermining Parliamentary authority”.³⁴ The British Chambers of Commerce (BCC), whilst also supporting the repeal of obsolete legislation, argued that it was “important” that there were “safeguards that allow for some scrutiny of the removal of measures”.³⁵

Adequacy of the safeguards

28. According to the Memorandum,³⁶ the safeguards are the consultation requirements under clause 54 and the draft negative procedure in clauses 55 and 56. (We consider the latter in paragraphs 35 to 42 below.)

Consultation

29. The statutory consultation is limited: the Minister must consult the Law Commissions (for England and Wales, Scotland and Northern Ireland) and other persons “as the Minister considers appropriate”.³⁷ This seems to us to be an unsatisfactory safeguard since it is a matter solely for the Minister to decide what consultation is appropriate. We note that, in contrast, under the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”), in setting out the safeguards for Legislative Reform Orders (LROs) made under the Act, the Minister is obliged to consult those organisations “as appear to him to be representative of interests substantially affected by the proposals” (section 13(1)(a)).

30. Under clause 54(1)(a) of the draft Bill, the Law Commissions are designated as statutory consultees. A similar provision exists under section 13(1)(d) of the 2006 Act as

30 Q 482

31 Written evidence from DPRRC, paras 23 and 27.

32 Written evidence from Joint Committee on Human Rights.

33 Written evidence from FSB, para 29.

34 Written evidence from R3, p 16.

35 Written evidence from BCC.

36 Para 326.

37 There are three UK Law Commissions. Statute law repeal s work is carried out by the Law Commission for England and Wales and the Scottish Law Commission, with the former taking the lead (see written evidence from the Scottish Law Commission). In this Report, we usually refer to the Law Commissions in the plural. Where it is referred to in the singular it means the Law Commission for England and Wales. The Scottish Law Commission endorsed the evidence of the Law Commission for England Wales.

part of the procedure for LROs. Lord Justice Lloyd Jones, Chairman of the Law Commission for England and Wales, explained why, in his view, in the case of both the 2006 Act and the draft Bill, such consultation was of very limited value:

Our researches seem to show that [the Government] have rarely consulted the Commissions. If we are consulted, it is likely that the orders will relate to matters with which we are not currently concerned, and, without ourselves carrying out the research, we will not be in a position to give a reliable response. ... It seems to us that it would be better for the Commissions to undertake the work in the first place as opposed to marking the homework of others.³⁸

31. He concluded: “It does seem to us that the provision for consultation in clause 54, while appearing to create a safeguard, is likely to be illusory”.³⁹ Mr Clarke, in his letter to the Joint Committee of 5 November 2013, indicated that the consultation provision was not included so that the Law Commissions could, in effect, “mark ... the homework of others”; it was included so that “the Law Commission would be aware of what the Government proposed to do under the power” to ensure, for example, that a proposal was not already being considered in the Commissions’ current Statute Law Repeals (SLR) programme of work (see paragraphs 48 and 49 below). According to Mr Clarke, “the requirement was not intended to have the effect of ... obliging them to do research”.⁴⁰

32. The weight of the evidence critical of the scope of the new order-making power and of the nature of the safeguards is overwhelming. It was with some surprise, therefore, that, in his letter of 5 November 2013, Mr Clarke suggested an amendment to the draft Bill to the effect that, if it were to be recommended by the Joint Committee, reference to the Law Commissions would be removed. It was also surprising that, in his letter of 11 November 2013, Mr Clarke should assert that he remained “strongly of the belief” that the power was both “modest and appropriate”.⁴¹ Neither of these descriptions seems to us to be apposite. In our view, the test to be applied—“if a Minister considers” that a piece of legislation “is no longer of practical use”—is entirely subjective and a matter for Ministerial discretion alone, and the safeguards—that the Minister should consult as he “considers appropriate” and subsequent Parliamentary scrutiny in the form of the draft negative procedure—are disproportionately light-touch.

33. The order-making power in clauses 51 to 57 of the draft Bill, as currently drafted, is too wide and the safeguards are inadequate.

38 Q 56

39 Q 56. See also Ruth Fox of the Hansard Society, Q 434. In Chapter 5, para 160, we note, to our surprise, that the Government undertook very limited consultation indeed with the Law Commissions about their inclusion in the draft Bill as statutory consultees.

40 Letter from Mr Clarke to the Joint Committee dated 5 November 2013.

41 Letter from Mr Clarke to the Joint Committee dated 11 November 2013.

An inappropriate Parliamentary scrutiny procedure?

Henry VIII powers

34. The clauses containing the order-making power and certain other provisions in the draft Bill are Henry VIII clauses.⁴² Given the difference in the level of scrutiny accorded to primary and secondary legislation, Henry VIII powers are regarded by the DPRRC, which scrutinises the delegations in all public Bills introduced into the Lords, as particularly significant. The DPRRC has suggested that there should be “a presumption in favour of the affirmative procedure” in regard to the use of Henry VIII powers.⁴³ The Lords Constitution Committee has said that, since Henry VIII clauses represent a departure from constitutional principle, they “should be contemplated only where a full and clear explanation and justification is provided”.⁴⁴ In his written evidence, Lord Norton of Louth cited Lord Judge, then Lord Chief Justice, who argued that the increasing use of Henry VIII powers was a “pernicious habit”.⁴⁵ We note also the comments of the Joint Committee on Human Rights that that Committee has been critical of Henry VIII clauses “because the power they purport to confer is so wide that it could be used to reduce legal protection for human rights without full Parliamentary scrutiny”.⁴⁶

Procedure proposed for the order-making power

35. Clauses 55 and 56 of the draft Bill stipulate that the procedure to be applied to the order-making power is the draft negative procedure whereby the Minister lays a draft order with an explanatory document before Parliament and cannot go on to make the order in the terms of the draft order if either House of Parliament so resolves within a 40-day period. Furthermore, a committee of either House charged with reporting on the draft order may, during the 40-day period, recommend that the Minister may not make an order, in which case, no order can be made unless the recommendation of the committee is rejected by resolution of the relevant House. According to the Government, the procedure is based on section 16 of the 2006 Act. Unlike the 2006 Act, however, no provision is made to enable either House of Parliament to upgrade the procedure to either affirmative or super-affirmative (see section 15(3) of the 2006 Act).⁴⁷ The Memorandum provides no explanation of why the draft Bill is limited in this way.

36. In his letter of 11 November 2013, Mr Clarke states that, because of the procedural safeguards built into the draft Bill, the procedure is “stronger” than the affirmative

42 See footnote 21.

43 DPRRC, 3rd Report, Session 2002-03, HL Paper 21, para 6.

44 Lords Constitution Committee, *Public Bodies Bill [HL]*, 6th Report, Session 2010-11, HL Paper 51, para 6.

45 Written evidence from Lord Norton of Louth, footnote 3.

46 Written evidence from the Joint Committee on Human Rights.

47 Under the 2006 Act, a committee of either House may upgrade a draft LRO so that, for example, if it is originally subject to the negative procedure, the committee can recommend that it should be upgraded to the affirmative procedure (whereby a Minister may make an order in the terms of the draft order if the draft order is approved by a resolution of each House after the expiry of a 40-day period after the draft order has been laid before Parliament) or to the super-affirmative procedure (whereby there is a 60-day period from date of laying during which representations may be made, including recommendations by the committee. The Minister is required to have regard to any representations and, if, after the 60 days, he wishes to proceed with the draft order as laid, he has to lay a statement giving details of them. The Minister may make the order in the terms of the draft order if the draft order has been approved by both Houses.)

procedure. Whilst we agree that this is true of the more usual draft affirmative procedure (whereby an order can only be made if approved by both Houses), we cannot agree that it is true of the affirmative procedure under the 2006 Act.

Will the draft negative procedure do?

37. A number of witnesses were critical of the proposed procedure. The principal grounds are twofold: first, that the draft negative procedure does not afford an appropriate level of Parliamentary scrutiny for a Henry VIII power; and, secondly, that, against the advice of the DPRRC, the procedure amounts to yet another avenue of strengthened scrutiny procedure.

Inappropriate level of scrutiny

38. We received no evidence to counter the presumption that a Henry VIII power of the magnitude of the order-making power should be subject to at least affirmative procedure. The DPRRC, having found the clause 51 power inappropriate, said: “... we do not regard the procedural arrangements in clauses 54-56 as in any sense mitigating the unacceptability of the power”.⁴⁸

Another “strengthened procedure”

39. In 2012, the DPRRC published a Special Report on what that committee described as the “complex patchwork of procedures written into legislation to give Parliament a strengthened scrutiny role over certain legislative powers delegated by Parliament to Ministers”.⁴⁹ The DPRRC identified 11 variations in strengthened scrutiny procedures, made under 10 different Acts, and recommended that “in proposing a strengthened scrutiny procedure in any future Bill the Government should normally use an existing model rather than creating a new variation ...”.⁵⁰

40. In its evidence to us, the DPRRC argued that the new procedure did “not fit happily into any of the existing categories” examined by the committee in its Special Report. The Commons Regulatory Reform Committee expressed disappointment that “the Government have not used the draft Bill as an opportunity to rationalise the current range of strengthened statutory scrutiny procedures”.⁵¹ Lord Norton of Louth commented that “the provision for Parliamentary approval ... adds a new procedure to the growing diversity, and complexity, of processes for parliamentary deliberation and approval”.⁵² Ruth Fox of the Hansard Society commented that the introduction of “yet another procedure ... just adds to a layer of complexity in the handling of delegated legislation, which, frankly, is now completely out of control”.⁵³

48 Written evidence from DPRRC, para 27.

49 DPRRC, Strengthened statutory procedures for the scrutiny of delegated powers, 3rd Report, Session 2012-13, HL Paper 19, para 1.

50 DPRRC, Strengthened statutory procedures for the scrutiny of delegated powers, 3rd Report, Session 2012-13, HL Paper 19, para 2.

51 Written evidence from Regulatory Reform Committee, para 1.

52 Written evidence from Lord Norton of Louth, p 4.

53 Q 456

41. Given the weight of this evidence, it seems to us surprising that the Government should take a quite different view and argue that they “deliberately avoided creating a new form of Parliamentary procedure” because the procedure in the draft Bill is “essentially the same as that set out in section 16 of the 2006 Act”.⁵⁴ The fact is that, although the draft Bill procedure is modelled on the 2006 Act, “the use made of the 2006 Act is partial”,⁵⁵ and if clauses 55 and 56 were to become law, the new procedure would add to the list of 11 statutory provisions for strengthened Parliamentary scrutiny, identified in the Special Report of the DPRRC, yet a twelfth procedure. Lord Norton of Louth commented: “in summary, this part of the draft Bill proposing Henry VIII powers is deficient not only on the face of its provisions, but also in the way that it has been brought before Parliament. It is not clear whether the provision has been advanced in ignorance, or defiance, of the recommendations of the Delegated Powers Committee”.⁵⁶ Given that the Government acknowledge the DPRRC Special Report, the former explanation cannot be true. We are led to the conclusion, therefore, that it must be the latter.

42. Even if some sort of order-making power along the lines suggested were acceptable, the proposed Parliamentary scrutiny procedure does not offer an appropriate safeguard and it is extremely disappointing that it would add yet another variant to the existing complex raft of strengthened scrutiny procedures.

The disadvantages of repealing primary legislation by order

43. In addition to criticisms about the nature of the Parliamentary procedure to be applied to the order-making power, several witnesses commented on the disadvantages of using an order to repeal primary legislation rather than using primary legislation. Two disadvantages were drawn to our attention in particular: the risk of judicial review and the “all or nothing” character of secondary legislation.

Risk of judicial review

44. Secondary legislation is legislation made by Ministers using powers delegated to them by a parent Act of Parliament. Ministerial exercise of those powers may be challenged by way of judicial review. When asked whether, in the circumstances, the proposed order-making power could provide legal certainty, Ruth Fox said: “by definition it does not because it leaves open the option for judicial review”;⁵⁷ and the Law Commission made a similar point: “the fact that repeals were being achieved by an order means that the order would potentially be challengeable by judicial review. Accordingly the new procedure would not achieve the certainty of repeal by primary legislation”.⁵⁸

45. We put the point to Mr Clarke. He argued that the possibility of judicial review provided “a constraint” which would mean that “some care [would] have to be taken to make sure that the process is being done properly”.⁵⁹ Whilst we find comfort in Mr

54 Mr Clarke’s letter to the Joint Committee of 5 November 2013.

55 Written evidence from Lord Norton of Louth, p 4.

56 Written evidence from Lord Norton of Louth, p 6.

57 Q 455

58 Written evidence from the Law Commission of England and Wales, para 33.

59 Q 539

Clarke’s acknowledgment of judicial review as a constraint, other of his remarks were less encouraging. First, Mr Clarke appeared open to the possibility that Ministerial exercise of the order-making power might be subject to “frequent” judicial review—this, he said, would “show that Ministers and departments are just being too cavalier in the way they are doing it and the judges will reverse it”.⁶⁰ Secondly, it is the Government’s perception that the SLR process is “lengthy and cumbersome” whereas the new order-making power would be “faster and simpler”.⁶¹ It seems to us that achieving that “faster and simpler” process is likely to be at a price, namely that the process will not be “done properly”, as Mr Clarke hoped, and would therefore be subject to challenge in the courts. It is also the case that any judicial review proceedings would leave interested parties in the difficult position of being uncertain as to the continuing force of legislation. Additionally, judicial review proceedings can be lengthy and protracted so any challenge could defeat the suggestion that this measure would create a simpler and faster means of repealing legislation.

Secondary legislation: all or nothing

46. Secondary legislation cannot be amended by Parliament. The options open to each House are accept or reject. The DPRRC suggested that, for Parliament, this was “the principal disadvantage of the proposed power”—that, “like most delegated legislative powers, either House ultimately has no choice but to take or leave the draft instrument as a whole”.⁶² Lord Norton of Louth made a similar point.⁶³

The power is unnecessary?

47. A number of witnesses were critical of the order-making power for more practical reasons. They argued that it is unnecessary on the grounds that: first, with regard to primary legislation, the Law Commissions already perform the function; and, secondly, with regard to secondary legislation, the Minister could revoke or amend an order using the powers under which the original instrument had been made.

Primary legislation

Law Commissions’ Statute Law Repeal procedure

48. Under section 3(1) of the Law Commissions Act 1965, the Law Commission of England and Wales and the Scottish Law Commission are under a duty to keep all law under review with a view, amongst other things, to “the repeal of obsolete and unnecessary enactments”. Under section 51 of the Justice (Northern Ireland) Act 2002, the Northern Ireland Law Commission is required to keep under review the law of Northern Ireland with a view to “the repeal of legislation which is no longer of practical utility”. The Law Commission of England and Wales explained to us that they have “a dedicated team” of

60 Q 539

61 Note to the Joint Committee on the Draft Deregulation Bill – follow up on officials evidence session on 16 October 2013, para 6.

62 Written evidence from DPRRC, para 25.

63 Q 480

two lawyers,⁶⁴ working on repeals and that since 1965 they have promoted the repeal of over 3,000 statutes and many thousands of other provisions.⁶⁵ In a debate on commencement orders in the House of Lords on 7 November 2013 the Government expressed their appreciation of the work of the Law Commission. Lord Gardiner of Kimble said: “the work of the Law Commission is extremely valuable. It undertakes periodic reviews of particular areas of legislation and does the detailed preparatory work on what we know as Statute Law (Repeals) Bills. These are valuable, if somewhat unsung, exercises which help to tidy up the statute book ...”.⁶⁶

49. Bills prepared by the Law Commissions to “repeal ... enactments which ... are no longer of practical utility”⁶⁷ (SLR Bills) are subject to a special, fast-track Parliamentary procedure. They are generally introduced into the House of Lords and they follow the same process as consolidation bills: that is, after second reading, they are referred to the Joint Committee on Consolidation etc. Bills. A hearing is held where members of the specialist team at the Law Commission responsible for the preparation of the Bill give evidence. Thereafter, an SLR Bill will quickly go through remaining stages in the Lords and, a few weeks later, it will go to the Commons where all stages are usually taken together. The process is fast. The SLR Bill in 2012-13, for example, was introduced on 10 October 2012 and received Royal Assent on 31 January 2013.⁶⁸ One minute of time was taken on the floor of the House of Commons. In total it took up 74 minutes of Parliamentary time, of which 59 minutes were in Joint Committee.⁶⁹ It was the largest SLR Act that the Commissions have ever produced. It repealed 817 whole Acts and part repealed 50 other Acts.⁷⁰

Relationship between the order-making power and the Law Commissions’ statute law repeals function: complementary or duplicatory?

50. The Law Commission told us that, in their view, the two phrases—of “practical utility” and “practical use”—had “exactly the same meaning”.⁷¹ The Government argue, however, despite appearances to the contrary, that the new order-making power and the Law Commissions’ existing statute law repeal functions are complementary, the former being “distinct from, but supplementary to” the latter.⁷² Mr Clarke repeated this point in oral evidence: the power, he said, “will supplement the powers of the Law Commission. I do not think it will duplicate them”,⁷³ and in his letter dated 5 November 2013, he said: “the Government believe that the new power ... poses no threat to the responsibilities and work of the Law Commission”.⁷⁴ The Government explained in the Memorandum the

64 Currently, 1.7 full-time equivalent and a research assistant. The Scottish Law Commission has one part-time lawyer working on repeals.

65 Written evidence from the Law Commission of England and Wales.

66 HL Debs, 7 November 2013, col GC 155.

67 Commons SO 140(e) and Lords SO 51(5).

68 Written evidence from the Law Commission of England and Wales, paras 13–15.

69 Written evidence from the Law Commission of England and Wales, para 15.

70 Website of the Law Commission of England and Wales.

71 Written evidence from the Law Commission of England and Wales, para 22.

72 Memorandum, para 323.

73 Q 524

74 Letter from Mr Clarke to the Joint Committee, 5 November 2013.

advantages of using the new power: that “departments will be able to follow a timeframe which meets their own priorities”; they “will have scope to focus on areas of law which for the time being are not being considered by the Law Commission”; and the power will be used to disapply secondary as well as primary legislation—SLR Bills repeal primary legislation only.⁷⁵ (We consider this last point in paragraph 66 below.)

51. Mr Clarke’s letter of 5 November 2013 suggested a further reason for the new power: that Ministers “may reasonably take a different view” from the Law Commissions “about whether a measure is no longer of practical use” and that “it would be right under those circumstances for the Minister to make the case for repeal under the new process”.⁷⁶

52. Several witnesses, however, argued that the new order-making power is unnecessary because the Law Commissions are doing the work already and they carry out their remit well. The Law Commission itself describes the proposal “for achieving the same result” as “puzzling”.⁷⁷ Ruth Fox was critical of the proposed power and when asked whether the provisions could, in her view, be made acceptable by amendment, said: “... rather than amending them, I question the need for these provisions precisely because the Law Commission does the job very well”.⁷⁸ Baroness Jay of Paddington queried the justification for the order-making power because “a well-established procedure already exists for repealing legislation that ‘is no longer of practical utility’: statute law repeals bills”.⁷⁹ The Institution of Occupational Safety and Health (IOSH), focusing on health and safety legislation, argued that the order-making power was unnecessary because of the work of the Law Commissions.⁸⁰

53. The Law Commissions are under a duty to review legislation in order to identify laws which are “no longer of practical utility”. The proposed order-making power is intended to offer a mechanism for repealing legislation “no longer of practical use”. It appears to us that, in principle, the order-making power duplicates the function of the Law Commissions, although we acknowledge that the Government have raised legitimate concerns about the delays in producing Law Commission SLR Bills and the need for more efficient processes.

Practical matters

54. We considered whether, even if the order-making power and the functions of the Law Commissions overlap, there are sound practical reasons which would justify the order-making power.

55. The Law Commissions, since 1965, have produced 19 SLR Bills. SLR Bills are introduced into Parliament every three or four years. The Government say they are proposing the new order-making power so that removing obsolete legislation can take place more quickly. Mr Clarke indicated the Government’s frustration at the pace of the

75 Memorandum, para 325.

76 Letter from Mr Clarke to the Joint Committee dated 5 November 2013.

77 Written evidence from the Law Commission of England and Wales, para 18.

78 Q 443

79 Written evidence from Baroness Jay of Paddington.

80 Written evidence from IOSH, para 18.

work of the Law Commissions when he commented: “the thing about the Law Commission is that at the moment it does go slowly, very methodically and extremely carefully”.⁸¹ Another reason offered for the new power is to enable departments to instigate the repeal of obsolete legislation which may be in an area of law not currently under consideration by the Law Commissions.

56. The Law Commissions acknowledged to us that improvements could be made to the present arrangements which would meet both the demand for greater speed and for greater responsiveness to the needs of individual departments. When asked the reason for the three- to four-year interval between Bills, we were told that it was “just the way” it had “developed over the years”.⁸² The Law Commissions suggested the process could be speeded up. The three- to four-year interval was governed by the fact that each SLR Bill covered about a dozen topics, each taking about six months to complete. It would be possible, we were told, that “if it were thought appropriate, the procedure could be accelerated so that a Bill containing fewer topics could be offered to Parliament much more speedily than at present”.⁸³

57. As for being responsive to departments, the Law Commission said that they “would welcome the opportunity of helping departments repeal their obsolete legislation”, and suggested “improvements in communications” between the Law Commission and departments.⁸⁴ We welcome this suggestion. The need for improvement in communications is vividly demonstrated by Schedule 16 to the draft Bill. Schedule 16 sets out a range of repeals which provide examples of the sorts of repeals that could be made using the order-making power. They are therefore the sorts of repeals which would be taken up by the Law Commission in their SLR work. We were told by the Law Commission, however, that none of them were proposed when in June 2011 the Law Commission invited legal teams throughout Government to make suggestions for what was to become the 2013 Act, and they could have been proposed for the next SLR Bill which is due in 2015.⁸⁵ Mr Letwin, however, gave a different account. He justified the inclusion of Schedule 16 on the grounds that “the Law Commission has not gone about the business of getting rid of them yet”. When given the Law Commission’s description of events, he said that that was “odd”: “when we asked departments what they would like to get rid of that was obsolete we got this [the Schedule 16] list”.⁸⁶

58. The Law Commissions’ proposals for improvement with regard to producing more frequent and more responsive SLR Bills appear to us to answer the Government’s reasons justifying the proposed order-making power, namely to allow departments to follow their own timeframes and to repeal legislation in areas of particular concern to them. We query, however, how this can be achieved given the current size of the Law Commissions’ SLR teams. In principle, we think consideration should be given to an annual SLR Bill.

81 Q 524

82 Elaine Lorimer, Chief Executive of the Law Commission of England and Wales, Q 82.

83 Written evidence from the Law Commission of England and Wales, para 39.

84 Written evidence from the Law Commission of England and Wales, paras 40 and 37.

85 Written evidence from the Law Commission of England and Wales, para 37.

86 Q 530

59. A further practical point raised by the Government was that repealing obsolete legislation by way of primary rather than secondary legislation requires Parliamentary legislative time, which is in short supply. Mr Clarke made the point: “You say that [the Law Commissions] could do a Bill more frequently, but that means the business manager of both Houses has to fit another Law Commission Bill into the timetable”.⁸⁷ Whilst acknowledging the correctness of this point with regard to primary legislation generally, we cannot see that it has much force when it comes to non-controversial Law Commission Bills which, as we have explained (in paragraph 49 above), are fast-tracked and take little Parliamentary time (the preponderance of which is in Joint Committee).

Practical advantages of the Law Commissions

60. So far, our consideration has been on the basis that the Law Commissions and the Government are offering, in effect, the same service of identifying and promoting the repeal of obsolete legislation, the difference being that one is by primary and the other by secondary legislation. We raised the question whether the Law Commissions could provide the flexibility asked for by departments.

61. Some witnesses argued, however, that, for practical reasons, the Law Commissions would provide a better service than Government departments. The reasons are twofold. First, as the Chairman of the Law Commission of England and Wales, Lord Justice Lloyd Jones, explained to us, being able to conclude that a piece of legislation is obsolete is painstaking work because “the problem is that, until the work is carried out properly, we cannot be satisfied that an Act of Parliament is no longer of any practical use or practical utility”; and he gave, by way of example, an instance where a statute which provided for smallholdings for servicemen returning from the First World War was found, after detailed researches, still to have relevance for one remaining trust.⁸⁸ The Law Commission has a dedicated team, well used to carrying out the research and consultation needed if Parliament is to be confident that the “no longer of practical use” test is satisfied. Ruth Fox posed the question that, given the skills set needed for this “very specialist and very technical” work, “within departments or across Government, do they have enough people standing by with that skill set to do the job? The Law Commission does, so why duplicate?”⁸⁹

62. We are also aware that external organisations representing those who may be affected were a repeal to be made by mistake, are nervous of the proposed Ministerial power. The Institute of Chartered Accountants of Scotland (ICAS) expressed a concern that, because of the complexity of insolvency legislation, there was “a real risk that potentially detrimental changes may slip through unnoticed”.⁹⁰ IOSH expressed the fear that it could be misused: “... we are concerned that Ministers could inadvertently seek the removal of health and safety legislation that was still of practical use”.⁹¹

87 Q 524

88 Q 77

89 Q 445

90 Written evidence from ICAS, p 4.

91 Written evidence from IOSH, para 18.

63. The burden of proof rests with the Government to demonstrate that they understand the extent of the work that underpins a conclusion that legislation is obsolete. We are not confident that they have demonstrated this understanding. Mr Letwin, in referring to Schedule 16, said: “[in Schedule 16] you will see a whole list of obsolete items, which I hope the Committee will agree are genuinely obsolete”.⁹² It is not clear to us on what evidence base we could agree to such a conclusion. Mr Clarke, in defending the proposed new power, said: “we are here talking about redundant and obsolete legislation, which, when its repeal is suggested, does not stir a hair anywhere and nobody comes forward”.⁹³ But this misses the point, which is that, in order to be confident that a piece of legislation is “redundant and obsolete”, there needs to be thorough and painstaking research and consultation if mistakes are to be avoided.

64. A second practical advantage of the Law Commissions, and one which reinforces the trust that Parliament places in the work of the Law Commissions to the extent of allowing a fast-track procedure for non-controversial Law Commission Bills, is the independence of the Law Commissions from Government. Lord Norton of Louth argued that “the advantage” of the Law Commissions is that their work is “detached”.⁹⁴ The point is also made by the Law Commission: “the independence of the Commission ... means that Parliament ... knows that the repeal proposals are legally sound and have not been influenced in any way by the vagaries of political consideration or expediency. The Commission has no axe to grind in proposing reform”.⁹⁵ In contrast, an order promoted by a Minister may be regarded with greater political scepticism, not only because of the interplay of political interests but also because of the Government’s view (see paragraph 22 above) that a decision about whether a law is no longer of practical use is a subjective one.

65. The skills, research and consultation needed to ensure that Parliament, external organisations and the public can be satisfied that a piece of legislation is genuinely obsolete strongly suggest that the Law Commissions are better placed to conduct that work than Government departments. Added to which, the independence of the Law Commissions from Government and their track record since 1965 reinforce the trust that Parliament places in the Law Commissions; and it is that trust which has enabled Parliament to fast-track non-controversial Law Commission Bills including SLR Bills. However, we believe that there is merit in the Government and the Law Commissions looking at ways to increase the through-put of the Law Commissions. We would expect, at the very least, that consideration will be given to increasing the number of lawyers deployed by the Law Commissions on SLR work.

Secondary legislation

66. The proposed order-making power applies to secondary, as well as primary, legislation. Several witnesses queried why this was necessary. The DPRRC, for example, commented: “... it is unclear why the power in clause 51 is thought necessary where amendments to subordinate legislation are in issue, given that the relevant Minister could generally amend

92 Q 529

93 Q 531

94 Q 471

95 Written evidence from the Law Commission of England and Wales, para 12.

or revoke existing subordinate legislation simply by making a further instrument in exercise of the same powers as before”.⁹⁶ The Law Commission made a similar point: “much secondary legislation lapses when its parent Act is repealed and it can also usually be revoked using the same powers that created it”.⁹⁷ **It is, therefore, unclear why the order-making power should extend to secondary legislation.**

Conclusion with regard to the order-making power

67. We support the intention of the Government to “de-clutter” the statute book. We have concluded, however, that the order-making power is too wide and the safeguards, including the level of Parliamentary scrutiny, are inadequate; that there are strong practical and procedural disadvantages to repealing primary legislation by order and that a new power is unnecessary with respect to secondary legislation; and that, subject to changes to the operation of the Law Commissions’ SLR programmes to meet the needs of departments, the Law Commissions are better placed to take forward the Government’s commitment to remove obsolete legislation. **We therefore recommend that clauses 51 to 57 be removed from the draft Bill. Whilst we do not recommend the removal of Schedule 16, we recommend that the provisions in the Schedule be referred to the Law Commissions for confirmation, before the Committee stage of the Bill in the first House, that they are “no longer of practical use”.**

68. If the Law Commissions are to perform this task effectively, however, they will need to improve their working practices which, at present, result in SLR Bills only every three to four years and do not appear to be sufficiently responsive to the needs of Government departments. Therefore, to enable the Government to meet their objective of reducing the amount of obsolete legislation on the statute book, we have further recommended that the Law Commissions discuss with Government the improvements in their operations, as they have suggested, in order to enable more frequent SLR Bills which more effectively meet the needs of departments.

Can the order-making power be redeemed?

69. We have concluded that the order-making power is unacceptable for a variety of reasons, but that, in any event, the Government’s objective in proposing the power might be met by the Law Commissions. One of the advantages of the Law Commissions is that they have a track record of thoroughness and independence which has enabled Parliament to feel confident in allowing a fast-track procedure for SLR Bills.

70. The two Houses may take the view that, if the Government were able to propose an order-making power which included the same standard of safeguards as the current arrangement with the Law Commissions, then such a power might be a genuine complement to the work of the Law Commissions.

⁹⁶ Written evidence from DPRRC, para 24.

⁹⁷ Written evidence from the Law Commission of England and Wales, para 8.

An acceptable order-making power?

Using an existing strengthened scrutiny procedure

71. We asked the Government why the order-making power did not fall within the 2006 Act. Mr Clarke explained:

The order-making power would ... be supplementary, not duplicatory, to Part 1 of the [2006 Act]. The existing provisions within the 2006 Act were not drafted to deal with legislation that is no longer of practical use, and in many cases it would be difficult to show that disapplying this type of legislation removes a live ‘burden’ within the meaning of that Act.⁹⁸

A Government briefing note explained further: “The point of introducing the new order-making power is not to reduce burdens but to avoid confusion which can all too easily be caused by the presence on the statute book of legislation which is no longer of practical use”.⁹⁹

72. We therefore asked whether the 2006 Act could be amended to include legislation no longer of practical use. David Howarth, the Bill Manager from the Cabinet Office, said that he had been advised by Parliamentary Counsel that it could. The Government had chosen not to adopt that approach because it would have involved “quite a technical series of amendments” to the 2006 Act. But, he said, “it can be done that way”.¹⁰⁰

73. We are aware that amendment of the 2006 Act would be complex. It would also be the case that the objections based on legal uncertainty (because of the possibility of judicial review) and the unamendability of secondary legislation would remain unaddressed. Furthermore, we query whether a new order-making power along the lines suggested would be of much practical advantage since, as with LROs, the relevant Parliamentary committees are likely to go to some lengths to satisfy themselves that any proposal for the repeal of obsolete legislation has been researched and consulted upon to the same high standards as are achieved by the Law Commissions. **We recommend however that, if the Houses were in favour of some sort of new order-making power, then it should be by way of amendment to the 2006 Act rather than an entirely new power. The amendment could be either to introduce a new test of “no longer of practical use” or to re-define the concept of “burden” so that it includes the burden of outdated and redundant legislation on the statute book.**

An appropriate level of Parliamentary scrutiny

74. In taking this view, we are not arguing that any new order-making power inserted into the 2006 Act should be limited to the draft negative procedure only. This would appear to be the effect of the Government suggestion that they would be prepared to insert clauses 51

⁹⁸ Letter of 5 November 2013.

⁹⁹ Note to the Joint Committee on the draft Deregulation Bill—follow up on officials evidence session on 16 October 2013: Clause 51 versus the LRO procedure, para 5.

¹⁰⁰ Q 6

to 57 of the draft Bill into the 2006 Act.¹⁰¹ **If the new order-making power were to be introduced by way of amendment to the 2006 Act, we recommend that section 15 of the 2006 Act should apply so that Parliament would have the opportunity to require an upgrading of the negative procedure to either affirmative or super-affirmative procedure. We further recommend that any new order-making power under the 2006 Act should fall within the orders of reference of the Regulatory Reform Committee in the Commons and the Delegated Powers and Regulatory Reform Committee in the Lords.**

Width of the power

75. Mr Clarke proposed to us that, given the concerns that have emerged during the course of this pre-legislative scrutiny inquiry, he would “consider amending the drafting of clause 51” in two ways: he proposed setting out on the face of the Bill limitations on the exercise of the power by defining the phrase “no longer of practical use” and removing reference to “if the Minister considers” from clause 51(1). Both these limitations are improvements. No definition of “no longer of practical use” is offered although we imagine it would be along the lines set out in the explanatory notes and described in paragraph 21 above.¹⁰² **If the new order-making power were to be introduced by way of amendment to the 2006 Act, we recommend that limitations on the scope of the power should be set out on the face of the Bill.**

Safeguards

76. The safeguard proposed under clause 54 of the draft Bill is that the Minister should consult the Law Commissions and “other persons” “as the Minister considers appropriate”. **The consultation provisions under the 2006 Act provide better safeguards and we recommend that they should be applied to any new order-making power.**

Other provisions in the draft Bill which has the effect of reducing Parliamentary scrutiny

77. The DPRRC drew to our attention a number of other provisions which have the effect of removing or reducing the opportunity for Parliamentary scrutiny of secondary legislation.

Inappropriate delegations: clauses 7 and 48

78. The DPRRC found the delegations in clauses 7 and 48 to be inappropriate.

Clause 7

79. Clause 7 concerns authorised fuel and exempt fireplaces. Under section 20 of the Clean Air Act 1993 (which creates offences in relation to certain smoke emissions), it is a defence

¹⁰¹ Note to the Joint Committee on the draft Deregulation Bill—follow up on officials evidence session on 16 October 2013: Clause 51 versus the LRO procedure, para 11.

¹⁰² Note to the Joint Committee on the draft Deregulation Bill—follow up on officials evidence session on 16 October 2013: Clause 51 versus the LRO procedure, para 11.

to prove that the emission was caused by an “authorised fuel” (defined by the Secretary of State in regulations subject to negative procedure). Under section 21 it is a defence to prove that an emission was caused by unauthorised fuel used in an exempt fireplace (the class of which is set out in a negative order). The effect of the new provision would be to remove the specification of authorised fuels and exempt fireplaces from secondary legislation (and therefore from Parliamentary scrutiny) and “into the realms of administrative lists”.¹⁰³ The DPRRC concluded that “in the context of the ingredients of a criminal offence and of its associated defence”, this was “a wholly unsatisfactory proposal”. **We accept the advice of the DPRRC that clause 7 gives rise to a point of principle about the unacceptability of ingredients of a criminal offence being outside Parliamentary scrutiny. We recommend that clause 7, in its present form, be removed from the draft Bill.**

80. We note, in passing, the reasons for clause 7. They are clearly explained by the DPRRC: “Apparently, manufacturers find it burdensome that fuels and fireplaces can be authorised or exempted in statutory instruments only once every six months. This is because it is Government policy where possible to limit to twice a year ... the occasions on which subordinate legislation affecting business may come into force”. The DPRRC draws the powerful conclusion:

Seemingly, having fashioned its own internal fetter on its powers to make regulations and orders, the Government are now presenting this self-erected obstacle as a ‘burden’ on business, to be relieved, not by modifying their own self-denying ordinance to allow instruments to be made more frequently in this case, but by denying Parliament control over the ingredients of a criminal offence (and defence).¹⁰⁴

Clause 48

81. Clause 48 amends the Merchant Shipping Act 1995 (“the 1995 Act”) (by adding a new section 306A) so that powers to make secondary legislation under the 1995 Act can be exercised so that reference in the legislation to an international agreement is to be interpreted as a reference to the agreement as modified from time to time rather than simply to the version of the agreement that existed at the time the secondary legislation was made. This is called an “ambulatory reference”.¹⁰⁵ According to the Explanatory Notes, “the current practice of implementing maritime conventions, and regular changes to them, by means of a mixture of primary legislation and secondary legislation has resulted in a complex regulatory structure that is confusing to industry and regulators alike”.¹⁰⁶ Such a power is precedent and we make no further comment on it.

82. The DPRRC, however, has drawn our attention to one aspect of the proposed power which is “novel”. It is that new section 306A(5) to (8) of the 1995 Act would allow the Secretary of State to give directions about whether, when and how any particular change to an international instrument would apply. The power to give directions is extensive. Under

¹⁰³ Written evidence from DPRRC, para 4.

¹⁰⁴ Written evidence from DPRRC, paras 5 and 6.

¹⁰⁵ In a recent report by the DPRRC, an ambulatory provision is defined as follows: it is a provision “where it gives legal effect to provision set out in some other document which can be changed from time to time and still have legal effect without any change being made to the regulations themselves.” 13th Report, Session 2013-14, footnote 2.

¹⁰⁶ Explanatory Notes, para 200.

new section 306A(6), for example, where a direction disapplies a particular change in a convention, it may also disapply provisions in the regulations and make alternative provision. The Commons Transport Committee also mentioned clause 48 with reservations: “The clause appears to give a far-reaching power to the Government to amend UK law to reflect changes to maritime treaties, bypassing Parliament entirely. ... We think that this issue should be explored further. The clause may need to be amended to ensure that it cannot be used to prevent Parliamentary consideration of substantive changes to international instruments ...”.¹⁰⁷

83. Only a small number of witnesses commented on this provision. Nautilus International said that it was “entirely sensible”,¹⁰⁸ and the UK Chamber of Shipping were supportive.¹⁰⁹ RMT (the National Union of Rail, Maritime and Transport Workers), on the other hand, expressed concern: the provision “risks bad legislation and unintended consequences due to lack of scrutiny by Parliament and outside bodies such as trade unions”.¹¹⁰ Lord Norton of Louth also drew attention to the provision.¹¹¹

84. Whilst we do not object to the general provision introducing ambulatory references into the 1995 Act, we note the advice of the Commons Transport Committee about the scope of the power and also of the DPRRC to the effect that the Secretary of State’s power to authorise directions in the proposed new section 306A(5) to (8) is too broad and an inappropriate delegation of legislative power. We recommend that these subsections should be amended so as to include a level of Parliamentary scrutiny.

Delegations requiring some sort of Parliamentary scrutiny

85. The DPRRC identifies a small number of other delegations in the draft Bill which, as a result of the provision in the draft Bill, are not or will no longer be subject to Parliamentary scrutiny but, in the view of that committee, should be. They are: clause 43(2) and (3) which enables the Secretary of State to curtail the statutory functions of enforcement officers under the Gangmasters (Licensing) Act 2004; and, Schedule 8, Part 6, which provides that exemption orders from rail vehicle accessibility regulations would no longer be made by way of statutory instrument. **We agree with the DPRRC and recommend accordingly that the delegations of legislative power conferred by provisions inserted by clause 43(2) and (3) of the draft Bill and by Schedule 8, Part 6, to the draft Bill should be exercised by way of statutory instrument, subject to the negative procedure.**

86. The DPRRC also draws our attention to clause 28 on model clauses in petroleum licences. We consider this provision in Chapter 5 of this Report.

¹⁰⁷ Written evidence from the Commons Transport Committee.

¹⁰⁸ Written evidence from Nautilus International.

¹⁰⁹ Written evidence from UK Chamber of Shipping.

¹¹⁰ Written evidence from RMT, part 4.0.

¹¹¹ Q 484

3 Economic Growth Duty

Introduction

87. In this Chapter we consider the economic growth duty which, like the order-making power, attracted submissions from a wide variety of witnesses in response to the Call for Evidence.

Economic growth duty in the draft Bill

Clauses 58 and 59

88. Clauses 58 to 61 of the draft Bill concern the exercise of regulatory functions. Clause 58(1) imposes a new duty on regulators to “have regard to the desirability of promoting economic growth” when exercising their regulatory function. Clause 58(2) further directs that in performing this duty the regulator must consider the importance of only taking regulatory action when it is needed and that any action taken is proportionate.

89. Clause 59 gives Ministers the power to specify, by order, the regulatory functions to which the new duty applies. Before making such order, the Minister must consult the regulator as well as any other persons “as the Minister considers appropriate”.¹¹² The order is to be made by a statutory instrument which has been laid before and approved by resolution of each House of Parliament. The order-making power is exercisable in relation to England and Wales, Scotland and Northern Ireland but only in relation to matters which are not devolved or transferred.

Clause 60

90. Under clause 60, the draft Bill allows for the Minister to issue guidance as to the performance of the duty to which the regulators must have regard. The guidance may include: guidance on the meaning of economic growth; the ways in which the regulatory function may be exercised so as to promote growth; and, guidance as to how regulators may demonstrate compliance with the duty. Consultation on the guidance in draft must take place with regulators and such others as the Minister considers appropriate and following this a draft must be laid before Parliament and approved before being made or issued.

91. Whilst it is not stated on the face of the draft Bill that the duty will not apply to economic regulators, the Government have said that their intention is that the economic regulators would not be included. This is explained by a number of reasons, including the fact that economic regulators’ primary focus is on the efficient operation of a market and that “their existing duties drive growth through the promotion of competition and investment”.¹¹³

¹¹² Clause 59(2)(a) and (b).

¹¹³ Written evidence from the Cabinet Office, para 8.

Background to the duty

92. The Government cite three reviews as being instrumental in the creation of the economic growth duty on non-economic regulators.¹¹⁴ The post-implementation review of the Regulators' Compliance Code found that regulators had "a tendency to regard the promotion of economic growth as subsidiary to their statutory duties" and the Focus on Enforcement reviews found that businesses experience "inconsistent or disproportionate enforcement decisions".¹¹⁵ The Heseltine report, *No stone unturned*, noted that many regulators were carrying out their functions without regard to the impact of their regulatory activities on "economic prospects".¹¹⁶

93. A consultation on the statutory duty was held in March 2013, to which the Government published a response in July stating their intention to bring forward the draft legislation within the draft Deregulation Bill. In their response, the Government said:

the growth duty will deliver clear benefits which will be instrumental in creating a regulatory environment conducive to economic growth ... [it] will not compromise the independence of regulators or undermine the importance of the essential protections they are there to deliver; rather it will provide clarity that growth is an important factor to be taken into account in the delivery of those protections.¹¹⁷

The Government's response sets out the primary objective of the growth duty: namely, to ensure that regulators have a "legal mandate" for their approach to economic considerations. The response also made clear that the Government were seeking "compliant growth, not non-compliant or illegal economic activity that undermines markets to the detriment of consumers, the environment and legitimate businesses".¹¹⁸

The desirability of a statutory growth duty

94. We heard mixed evidence on the desirability of the principle of a growth duty being a statutory obligation on specified non-economic regulators. The Local Government Association (LGA) commented that "there is an irony that a deregulation Bill should introduce a new duty where one is not needed".¹¹⁹ The TUC told us that the duty was "unnecessary"¹²⁰ and described it as "a very odd concept" that it was difficult to see how it would work.¹²¹ A similar view was echoed by UNISON, the National Association of Schoolmasters Union of Women Teachers (NASUWT), the Royal Society for the Protection of Birds (RSPB) and the Equality and Diversity Forum (EDF) who all called for the clauses to be removed from the Bill entirely.¹²² The EDF warned that the phrasing of the duty could have "a chilling effect" on regulators, discouraging them to take action that

¹¹⁴ Explanatory Notes, p169, para 224.

¹¹⁵ Explanatory Notes, p169, para 224.

¹¹⁶ *No stone unturned: in pursuit of growth*, October 2012.

¹¹⁷ Government response, *Non-economic Regulators: Duty to Have Regard to Growth*, July 2013, p 3, para 5.

¹¹⁸ Government Response, *Non-economic Regulators: Duty to Have Regard to Growth*, July 2013, p 7, para 2.2.

¹¹⁹ Written evidence from the LGA, para 24.

¹²⁰ Q 131 [Sarah Veale]

¹²¹ Q 114

¹²² Written evidence from UNISON, NASUWT, RSPB and EDF.

would be in the public interest as they may be fearful of “having to prove on each occasion that action was ‘needed’ rather than simply appropriate and justified”.¹²³

95. Other witnesses were more positive. The North East Chamber of Commerce, British Air Transport Association, Association of British Bookmakers, the Association of Convenience Stores and others welcomed the duty in principle.¹²⁴ The Forum of Private Business commented that unless the duty is “enshrined in legislation this [the promotion of economic growth] will remain an optional focus for many regulators”.¹²⁵ The British Chamber of Commerce (BCC) told us that the growth duty could “help establish more constructive relationships” between business and regulators.¹²⁶ The Institute of Directors (IoD) told us that the duty would be “helpful”, serving as a catalyst for regulators to consider costs and benefits when developing new policies.¹²⁷

96. The regulators who provided evidence to us were, in general, positive about the duty in principle. The Gambling Commission, for example, spoke about their “cautious welcome” for the growth duty¹²⁸ and the Equality and Human Rights Commission (EHRC) wished to underline that they were “fully in support of the intent of the Act and the growth duty in particular”¹²⁹ (notwithstanding objections that the EHRC raised to the duty in its application to the body itself) (see paragraph 112 below). The Security Industry Authority recognised the importance of economic growth and supported efforts to encourage it.¹³⁰ English Heritage felt that it already took economic considerations into account in its decisions.¹³¹

97. Evidence from the Government suggested that there was “hesitancy among regulators to take on responsibilities not clearly articulated in their statutory remit” and said that the duty was designed to “empower regulators”.¹³² They cited one regulator, Ofsted (the Office for Standards in Education) which we were told had stated that they were unable to consider growth without a statutory duty.¹³³ The responsible Minister, Rt Hon. Michael Fallon MP, told us that he believed the statutory duty was necessary for a number of reasons:

The Government want to see more growth. I think all of us in our constituencies want to see the economy grow, expand and create more jobs and wealth for the next generation. We have a large number of regulators now. Between them, they have a fairly large amount of funding. It is over £2 billion a year. I believe strongly that they need to be part of this. Where they can, they need to help the economy and the

123 Written evidence from EDF.

124 Written evidence from FSB, North East Chamber of Commerce, British Air Transport Association, para 4, Association of British Bookmakers and the Association of Convenience Stores.

125 Written evidence from the Forum of Private Business, para 11.

126 Q 111

127 QQ 346 and 347

128 Q 106

129 Q 109 [Alan Acheson]

130 Written evidence from the Security Industry Authority.

131 Q 149 [Michael Harlow]

132 Written evidence from the Cabinet Office, paras 4 and 5.

133 Written evidence from the Cabinet Office, para 4.

Government in their overall ambition of growth. We need it. Indeed, a number of regulators have made it clear to me over the last year that without the duty of growth it is not something they would consider. Their budgets are relatively tight and resources are thin and stretched. If there was not a duty there, they would not pay any attention to it.

He thought the duty would be a “very powerful incentive on a regulator” to ensure that the burdens on business were minimised and its decisions proportionate.

98. The TUC urged the Government to “consider other non-legislative ways of encouraging regulators to adopt a balanced approach to their statutory functions”.¹³⁴ Evidence from the Government stated clearly that they believed that the duty had to be introduced through primary legislation.¹³⁵ They argued that, in the past, efforts had been made to introduce the principle through the statutory Regulators’ Compliance Code, but this had been “insufficient to incentivise regulators to consider economic considerations”,¹³⁶ the reason being that the Code only applies “when determining any general policy or principles or when setting standards or giving guidance generally” and is “trumped by all other statutory duties affecting regulators”.¹³⁷

99. While welcoming the duty, the Forum of Private Business did not think that it should be an overriding factor but rather it should be “complementary to other duties”.¹³⁸ The Confederation of British Industry (CBI) was clear that giving regulators a complementary economic duty should not undermine their primary duty.¹³⁹

100. We heard concerns about the risks that the duty might pose to regulators. The TUC thought the duty could be “potentially quite dangerous” if it took regulators away from their prime duty of regulating on behalf of the community.¹⁴⁰ The Gambling Commission advised that care was needed in “implementing and explaining the duty to avoid the unintended consequences such as reduced rather than enhanced public confidence, additional regulatory costs or misuse by vested interests”.¹⁴¹ They stated that:

The public will only accept changes to regulation and allow innovation and expansion if they have the confidence that the regulator will indeed ensure that the growth is not disproportionately at the expense of public protection.¹⁴²

101. Some witnesses expressed concern about the potential impact of the proposed duty on the independence of regulators and, in particular, queried the power of Ministers to issue guidance on the operation of the growth duty under clause 60. The TUC described the clauses as “likely to compromise the independence of some regulatory bodies”, citing the

134 Written evidence from the TUC.

135 Written evidence from the Cabinet Office, p 21.

136 Written evidence from the Cabinet Office, p22. The Government cited evidence from the Focus on Enforcement initiative, the Post Implementation Review of the Code and comments from regulators themselves.

137 Written evidence from the Cabinet Office, p 22.

138 Written evidence from the Forum of Private Business, para 13.

139 Written evidence from the CBI, para13.

140 Q 131 [Sarah Veale]

141 Q 106

142 Q 106

Health and Safety Executive (HSE) and EHRC as examples.¹⁴³ The EDF argued that the power in clause 60 would “effectively give Ministers the power to tell regulators how to do their jobs, a clear compromising of their independence”.¹⁴⁴

102. In response to concerns about the independence of regulators, Dr Will Cavendish, Executive Director, Implementation Group, Cabinet Office, stated that the clause would not change the relationship between Government and the regulators, saying “the independent regulators are independent regulators”.¹⁴⁵ Mr Fallon confirmed that the Government were not attempting to “cut across” regulators’ independence,¹⁴⁶ and he assured us that:

The growth duty is complementary. It does not cut across the overriding duties of each individual regulator, nor should it be seen in any way as compromising their independence. It does not take precedence over the main reason for their existence ... I do not think it should impinge on the confidence that the public have in the way they [regulators] exercise their regulatory function.¹⁴⁷

103. With regard to clause 60, the Government recognised that the duty was “wide-ranging” and therefore it was necessary to have “rigorous consultation and scrutiny requirements” to apply to the exercise of the power.¹⁴⁸ The Government said that the fact that the guidance for the duty would be subject to the affirmative procedure would mean that “if there are concerns that it threatens the independence of regulators, this can be properly debated”.¹⁴⁹

104. We conclude that an economic growth duty on regulators is welcome provided that safeguards are in place to ensure that the growth duty does not take precedence over regulation and that the overriding and principal objective of regulators remains the protection of the public interest. We welcome the Minister’s assurance on these points; that the duty will not “take precedence over the main reason for their existence ... [or] impinge on the confidence that the public have in the way they exercise their regulatory function”.¹⁵⁰

105. Furthermore, we recommend that any powers given to Ministers to issue guidance, under clause 60(2)(b) of the draft Bill, on how the economic growth duty should be performed must not compromise the independence of regulators. The Government should consider making this clear on the face of the Bill.

143 Written evidence from the TUC.

144 Written evidence from the EDF.

145 Q 36

146 Q 499

147 Q 491

148 Written evidence from the Cabinet Office, para 340.

149 Written evidence from the Cabinet Office, p 22.

150 Q491

Deregulatory extent of the duty

106. Witnesses questioned whether the growth duty was a deregulatory measure. The LGA warned of a danger that the duty would create a “system of bureaucracy and monitoring, without actually achieving any real or tangible benefits for business”.¹⁵¹ The IoD told us that they felt that the growth duty would not reduce the existing regulatory burden on business, although it might help in not increasing it in the future.¹⁵² They suggested that the deregulatory effect of the duty could only be judged once case law had been developed, saying that “it rather depends on whether individual businesses end up using judicial reviews in relation to this measure to challenge whether regulators have effectively implemented their growth duty”.¹⁵³ It was agreed that it would not be a lot less burdensome if business had to resort to judicial review.¹⁵⁴ The Gambling Commission suggested to us that it the duty “fosters litigation instead of collaboration” then there was a risk of increased regulatory costs for all.¹⁵⁵

107. In contrast, the Forum of Private Business believed that the growth duty “would reduce costs to business and remove a barrier to growth”.¹⁵⁶ The Association of Convenience Stores agreed that it would result in significant cost reductions for businesses.¹⁵⁷

108. Evidence from Government officials indicated that the Government was “absolutely sure” that the duty would be beneficial to business and be deregulatory.¹⁵⁸ Mr Fallon later told us, however, that the initial impact assessment made of the duty showed that it was “not a major part of our reduction on the burdens of business”.¹⁵⁹ He told us that he thought the duty would “not solve the problem of growth but will make a difference perhaps at the margin”.¹⁶⁰ In response to questions over the deregulatory extent of the provision, Mr Letwin argued that: “imposing a duty on regulators, if its effect is deregulatory for the rest of the economy and society on a major scale ... is a net deregulatory measure”.¹⁶¹ He said that the Government’s judgment was “that, on balance, the growth duty will be of significant assistance to the liberation of our economy and society from over-regulation and that which is disproportionate, too slow and unfair”.¹⁶²

109. While witnesses warned that there may be an increase in burden through court cases and judicial review process, Mr Fallon did not anticipate this to be the case. Indeed, he saw

151 Written evidence from the LGA, para25.

152 Q 347

153 Q 348

154 Q 349

155 Q 106

156 Written evidence from the Forum of Private Business, para18.

157 Written evidence from the Association of Convenience Stores.

158 Q 29

159 Q 496

160 Q 496

161 Q 513

162 Q 513

the threat of the expensive judicial review process being the “sanction” that would make both business and the regulator “tackle the issue head on”.¹⁶³

110. We are not clear that this measure is, in itself, necessarily deregulatory but if it is applied thoughtfully by regulators, it could lead to less burdensome regulation for some business in the future.

Regulators in scope

111. The Government’s response to its consultation on the growth duty set out a list of 50 non-economic regulators that were in scope of the intended duty. A list was also provided to us in evidence.¹⁶⁴ We heard concerns from regulators themselves, and others, over the inclusion of some of the regulators specified in this list.

112. Of particular concern to many was the inclusion of the EHRC. The Commission itself spoke about “the intrinsic incompatibility between the growth duty and the duty to promote and protect human rights”.¹⁶⁵ We were told that the EHRC is subject to the Paris Principles, the second of which being that the national human rights institution must be independent of the Executive. The EHRC was concerned that the duty may be perceived as fettering their independence and therefore putting both the ‘A’ status of the Commission¹⁶⁶ and the British candidacy on the UN Human Rights Council at risk.¹⁶⁷ It was suggested by the EHRC that “having an ‘A’ status as a national human rights institution is quite important for the projection of soft British power abroad”.¹⁶⁸ The Joint Committee on Human Rights agreed that clause 60 appeared to be “incompatible with the requirement in the Paris Principles” and as such was a “significant risk” to the ‘A’ status of the Commission.¹⁶⁹ This concern was shared by the EDF.¹⁷⁰

113. The EDF also raised concerns—albeit in less detail—about other regulators whose remit encompasses equality or human rights, for example the Information Commissioner.¹⁷¹ The IOSH was “strongly opposed” to a growth duty being imposed on the HSE, saying that in relation to the HSE the duty was “unnecessary and potentially damaging to the regulator’s primary duty of enforcing health and safety law”.¹⁷²

163 Q 497

164 Written evidence from the Cabinet Office, para 4.

165 Q 109

166 In order to obtain an ‘A’ status the EHRC was rigorously assessed by the United Nations Human Rights Council according to a number of well established criteria including composition and guarantees of independence and pluralism; having a mandate and adequate staff and budget to effectively protect and promote human rights; encouraging ratification of international human rights instruments; engagement with the international human rights system and co-operation with other National Human Rights Institutions. (<http://www.equalityhumanrights.com/human-rights/our-human-rights-work/international-framework/>)

167 Q 109

168 Q 116 [Ian Acheson]

169 Written evidence from the Joint Committee on Human Rights.

170 Written evidence from the EDF.

171 Written evidence from the EDF.

172 Written evidence from the IOSH, para 23.

114. The CBI, while supportive of the duty, felt that there would be certain regulators for which a growth duty is “unlikely to be relevant or helpful”.¹⁷³ The FSB recognised that in some cases it may be necessary to exempt some regulators from the duty. They suggested that in such instances the reason for the exemption should be made public.¹⁷⁴

115. We heard, however, from the Minister, Mr Fallon, that “very few regulators have resiled from the addition of this particular duty”.¹⁷⁵ He told us that there were “very few examples of a regulator saying that this would make life impossible for them”.¹⁷⁶ He was of the view that, other than immigration and local authority functions, there was “very little reason why any non-economic regulator should be excluded” from the duty.¹⁷⁷

116. Given the evidence we have received, we recommend that the Government review with some care the list of organisations to which the growth duty is intended to apply and consult fully with the organisations proposed. There is a risk that there may be, for some regulators, disproportionate and unintended consequences of the duty which need to be identified before the duty is introduced. We note the inclusion of the Equality and Human Rights Commission and the risks that its inclusion may present to its international standing.

Sustainable growth

117. Witnesses, including the FSB, suggested that the duty for economic growth should include the notion of “sustainable” economic growth.¹⁷⁸ The RSPB thought it would be more reasonable for the duty to specify the promotion of “sustainable development”.¹⁷⁹ In response to the proposal that the duty include “sustainability”, the TUC, EHRC, the Gambling Commission, the FSB and the IOSH broadly agreed that it would be a better option.¹⁸⁰ The EDF referred to the Regulatory and Reform (Scotland) Bill, which includes a duty “in respect of sustainable economic growth”.¹⁸¹ English Heritage, however, were unsure that in practical terms the inclusion of the term “sustainable” would make a great deal of difference.¹⁸²

118. Officials told us that the option of a duty for sustainable growth was considered as part of the draft Bill. However, the Government wanted regulators to take as broad a view as possible and wanted them “to be able to think about the broader consequences in the short term, the medium term and the long term”.¹⁸³ Mr Fallon said that he wished to keep the

173 Written evidence from the CBI, para 21.

174 Written evidence from the FSB, para 16.

175 Q 495

176 Q 495

177 Q 505

178 Written evidence from the FSB, para 32.

179 Written evidence from the RSPB.

180 QQ 122-124, 150

181 Written evidence from the EDF, p 5.

182 Q 150 [Michael Harlow]

183 Q 34

duty as simple as possible and that he was “a little wary about being boxed off into too tight a definition and qualifying it ... I want to stick to growth, pure and simple”.¹⁸⁴

119. We welcome the Government’s reasons for proposing a duty on regulators to have regard in broad terms to “economic growth”.

Measurement of the effect of the duty

120. The Government told us that they did not intend to impose any additional reporting and monitoring requirements on regulators in regard to the operation of the growth duty.¹⁸⁵ However, we were also told that there would be “a clear expectation that regulators will be transparent and make clear in public the steps they are taking to respond to the growth duty through existing mechanisms”.¹⁸⁶

121. The Gambling Commission thought that there was an argument against an external compliance function as compliance “ought to be visible and apparent anyway in the actions of the regulator”.¹⁸⁷

122. We were concerned that the Government had not made clear how they intended to measure the effectiveness of the duty. In response to our concerns, Mr Fallon confirmed that the Government would “monitor” the duty, and suggested that this would be done through the annual reports of regulators.¹⁸⁸ He went on to admit, however, that the impact of the duty would be hard to measure:

It is going to operate probably in a fairly difficult way to measure, in that we will never know the decisions they might have taken or the burdens they might not have lifted if the growth duty had not been there in the statute. I accept that it is going to be hard to measure arithmetically.¹⁸⁹

In regard to the difficulty in measuring the effect of the duty, the Minister confirmed that he would be “happy to reflect further on that”.¹⁹⁰

123. We recommend that the Government consider by what criteria the impact of the duty could be demonstrated. We welcome the Minister’s commitment to reflect further on the matter.

184 Q 508

185 Written evidence from the Cabinet Office, p 24.

186 Written evidence from the Cabinet Office, p 24.

187 Q 112 [Matthew Hill]

188 QQ 496 and 498

189 Q 496

190 Q498

4 Use of Land Provisions

Introduction

124. Of all the issues in the draft Bill, those associated with the rights of way provisions in clauses 12 to 18 and Schedule 6 (“the rights of way clauses”) attracted the most interest and the most passion in response to our Call for Evidence. Of the over 300 responses received, around half were either about the rights of way clauses or about issues related to them.

Background

125. The National Parks and Access to Countryside Act 1949 introduced the concept of “definitive maps and statements”, setting out recorded public rights of way. Local authorities in England and Wales (“surveying authorities”) are required, under the Wildlife and Countryside Act 1981 (“the 1981 Act”), to maintain and keep under review maps and statements showing public rights of way in their area. Some rights of way are not recorded on a definitive map and statement, and some are recorded with the wrong status. Originally, it was anticipated that completing the definitive map and statement would take about five years. 50 years later it was still not complete. As a result, a cut-off date was introduced. Under the Countryside and Rights of Way Act 2000 (“the 2000 Act”), unrecorded public rights of way created before 1949 are to be extinguished immediately after 1 January 2026 (the “cut-off date”), save for certain exceptions.¹⁹¹

Stakeholder Working Group

126. In 2008, Natural England and the Department for Environment, Food and Rural Affairs (Defra) concluded that the procedures in relation to this policy area were so complex that the addition of pre-1949 unrecorded rights of way to the definitive map and statement by the cut-off date could not be achieved. As a result, Natural England formed the Stakeholder Working Group (SWG). Membership included: representatives of the farming, land management and business interests; representatives of local authority interests; and representatives of rights of way users. The purpose of the SWG was to develop an agreed package of reforms which would improve the procedures for recording pre-1949 rights of way from the perspective of all interested parties.

127. The SWG met between October 2008 and January 2010. In March 2010, it published a report entitled *Stepping Forward: the Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England* (“the SWG Report”). The SWG Report included 32 recommendations aimed at “improving the processes for identifying and recording historical public rights of way”.¹⁹²

Consultation

128. From May until August 2012, the Government conducted a formal consultation on a document entitled *Improvements to the policy and legal framework for public rights of way*

¹⁹¹ The statutory provision has yet to be commenced.

¹⁹² The SWG Report, p 3.

which included the Government’s response to the SWG Report. According to the Government’s summary of responses, published in July 2013, “most respondents supported the Stakeholder Working Group proposals as a whole. There was also broad acceptance of the Group’s basic tenet that the proposals needed to be implemented as a package, because of the importance of maintaining consensus reached between access, environmental, land owner and local authority representatives”.¹⁹³ The summary, however, also stated that “there was some feeling that the opportunity to make more radical changes had been missed”.¹⁹⁴

Importance of the “package” remaining as a whole

129. The purpose of clauses 12 to 18 is, according to the Impact Assessment (IA), to “streamline and simplify the legal and procedural processes and reduce other barriers to recording rights of way on the definitive map and statement ...”.¹⁹⁵ The SWG emphasised that its proposals were a carefully developed package which met the needs of a range of relevant stakeholders and it was important, therefore, that the integrity of the package be maintained: “the Group feels strongly that the changes it advocates are a cohesive package and that it should be accepted as a whole and not cherry picked. Any partial implementation of its recommendations would unbalance the position, and damage the consensus behind the proposals”.¹⁹⁶ The National Farmers Union (NFU), a member of the SWG, also referred to the importance of the “cohesive package”, saying “any partial implementation ... would unbalance the position and damage the consensus behind the proposals”.¹⁹⁷ Other witnesses made a similar point.¹⁹⁸

130. We are aware that the law governing rights of way is highly contentious and commend the SWG for its achievement in reaching a consensus on the issue of recording unrecorded historic rights of way. We acknowledge also that maintaining that consensus requires the package of reforms contained in the draft Bill to be accepted as a whole.

Provisions in the draft Bill

131. The clauses and Schedule in the draft Bill are based on the SWG proposals.¹⁹⁹ The provisions form two related but separate rafts of measures aimed at mitigating the possible consequences of section 53 of the 2000 Act which provides (subject to certain exceptions) for the extinguishment, immediately after 1 January 2026 (the “cut-off date”), of unrecorded rights of way created before 1949. Where a right of way created before 1949 has not been included on a definitive map or statement by the cut-off date, the right will be extinguished. Clauses 12 to 14 provide a range of measures which disapply the principle of extinguishment in certain instances.

¹⁹³ Summary of consultation responses, July 2013, p 9.

¹⁹⁴ Ibid.

¹⁹⁵ Impact Assessment, 23 April 2013, summary.

¹⁹⁶ Written evidence from SWG, summary, p 1.

¹⁹⁷ Written evidence from the NFU.

¹⁹⁸ Written evidence from, for example, Essex Bridleways Association, the Institute of Public Rights of Way (IPROW), para 6, Ramblers, para 5, the Association of Directors of Environment, Economy, Planning and Transport (ADEPT),

¹⁹⁹ Written evidence from SWG, summary, p 1.

132. Clause 12 seeks to provide additional protection for rights of way after the cut-off date. After that date the surveying authority may not make a modification to a definitive map or statement (using its powers under the 1981 Act) if this might affect the exercise of a protected right of way and the only basis for the authority to consider modification is the discovery of evidence that the right of way did not exist before 1949. Clause 13 inserts a new section 56A into the 2000 Act enabling the Secretary of State to make regulations to enable surveying authorities, during a period of one year from the cut-off date, to designate public rights of way in their area that were extinguished immediately after the cut-off date. The regulations may further make provision for a designated right of way to cease to be regarded as extinguished. Further provisions provide for the possibility to amend the definitive map and statement and other provisions to preserve the existence of the right of way.

133. Clause 14 provides for a new section 56B of the 2000 Act which will apply where a public right of way would be extinguished at the cut-off date but is reasonably necessary to enable a person with interest in land to gain access to it or to part of it. In such instances the public right of way becomes a private one; and Clauses 15 to 17 deal with certain processes under the Highways Act 1980 and with matters outside the context of section 53 of the 2000 Act.

134. The provisions of Schedule 6 are aimed at streamlining the procedures and processes designed for the maintenance and keeping under review of definitive maps and statements and dealing with applications for their modification. Provisions of particular note include:

- Paragraph 2 amends section 53 of the 1981 Act, removing the requirement that a surveying authority makes a modification to a definitive map and statement when it is reasonably alleged that a right of way exists over land to which the map and statement relate. The requirement to make the modification will instead be limited to cases where on the ordinary civil standard of proof the right of way still exists. (It should be noted, however, that not all parties within the SWG have approved this provision and discussions are on-going);²⁰⁰
- Paragraph 3 enables the Secretary of State to introduce simplified and shortened procedures dealing with modifications which are needed to correct an administrative error;
- Paragraph 5 provides for sections 54B and C of the 1981 Act which make provision for the modification of a definitive map and statement by agreement.

135. The remainder of Schedule 6 deals with amendments to Schedules to the 1981 Act and the Highways Act 1980 and addresses the detail of processes. However, one issue has raised some criticism: paragraph 6(3) of the Schedule amends Schedule 14 to the 1981 Act and inserts a new paragraph 1B enabling application to a magistrates' court should the authority fail to assess an application for an order to modify the definitive map and statement within 3 months of receipt of the application. It has been suggested that this is a shift in burdens and does not amount to a deregulatory provision.

136. The clauses form part of the law of England and Wales but the amendments made by them affect public rights of way in England only.²⁰¹

Ongoing discussions

137. According to the SWG Report, the clauses in the draft Bill are not final: “Because of the complexity of the legislation that we are seeking to amend and the importance of getting it right, the clauses, as they appear in the draft Bill, are still subject to refinement through discussion”.²⁰² The same point was made during oral evidence. We asked a question about a change in detail to Part 3 of the 1981 Act²⁰³ which had attracted some criticism in the evidence we received. Kate Ashbrook, General Secretary of the Open Spaces Society, representing the users interests on behalf of the SWG, said that the group had discussed the issue but “we have not quite reached any conclusion yet ...”.²⁰⁴ Mr Anderson, Chairman of the SWG, explained that the draft Bill went beyond the SWG recommendation and that the SWG was still discussing issues.²⁰⁵

138. A number of other witnesses who supported the SWG proposals also acknowledged that aspects were still under discussion. The Association of Directors of Environment, Economy, Planning and Transport (ADEPT), for example, referred to the fact that there would be “further discussions ... with the aim of making minor improvements”, although they urged care: “... we would not wish to see such hard-won progress towards legislative reform undone by changes that alter the balance of the proposals so that they no longer command across the board support.”²⁰⁶ The Ramblers said: “The legislation is complex and work continues on the drafting of individual clauses and the Schedule to ensure that it properly represents the views of the SWG”.²⁰⁷ The Broads Authority and the Broads Local Access Forum expressed support for the rights of way clauses “in general” but proposed an amendment to a provision in respect of section 147 of the Highways Act 1980.²⁰⁸

139. Whilst the SWG has managed to forge a consensus in support of the package, aspects of the new provisions are still under discussion both within the SWG and more widely. We expect the Government to show leadership and balance to take this vital part of our Report to a successful conclusion.

Costs and backlog

140. One issue drawn to our attention by a number of witnesses concerned the practical consequences of the reforms, particularly for local authorities.. The purpose of the rights of way clauses is to facilitate the completion of the definitive map and statement in the face of insufficient progress so far. There is, we were told, currently a backlog of over 4,000

201 Explanatory Notes, para 62.

202 The SWG Report, p 4.

203 Part 1 of Schedule 6 to the draft Bill.

204 Q 294 [Kate Ashbrook]

205 Q 294 [Ray Anderson]

206 Written evidence from ADEPT.

207 Written evidence from the Ramblers, para 6.

208 Written evidence from the Broads Authority and the Broads Local Access Forum,

applications.²⁰⁹ The Open Spaces Society said: “Backlogs, in some cases of decades, are building up”; and, as a result, they supported the proposals in the draft Bill because “it would make a significant difference to progress”.²¹⁰ The South Somerset Bridleways Association told us that there was a backlog of applications in Somerset, noting, in particular, that 185 applications for DMMO [Definitive Map Modification Orders] were submitted between May 2008 and August 2010, none of which had been processed.”²¹¹

141. The evidence we heard suggested that the introduction of the 2026 cut-off will compound the problem of the backlog. Mrs Emrys-Roberts, of the SWG, said that she would expect further applications once the cut-off had been announced.²¹² John Trevelyan, a rights of way consultant, referred to Defra’s estimate in the IA that the cut-off provisions would lead to an additional 20,000 applications,²¹³ and warned of the consequent increased costs for local authorities caused by the “very substantial increase in the numbers of applications to local authorities”.²¹⁴ Jane Hanney, a solicitor who has specialised in public rights of way matters and who made a submission on behalf of the Alternative Stakeholders’ Working Group, referring to the problem of backlogs, queried how local authority rights of way departments, which were, she said, “currently understaffed, underfunded and inadequately qualified/trained”, would be able to cope with an increase in workload without additional funding and training.²¹⁵

142. Given the size of the backlog and the anticipated increase in the number of applications after the announcement of the cut-off, we asked the Government about local authority resourcing to enable them to meet these twin pressures. We were told by one official: “There is no doubt that the resources of local authorities are a problem. ... What we would argue is that simplifying and streamlining the system is bound to make things better at least”.²¹⁶ Ms Ashbrook said: “We are concerned about the backlog, of course. We are concerned that local authorities are cutting rights of way staff and that we are losing expertise”; but, she argued, the Bill provided “a real opportunity to do something. ... If we did nothing, it would just get worse”.²¹⁷

143. That the capacity of local authorities is an issue is confirmed by the IA. According to the IA, the key monetised benefits will be from savings to central government and local authorities as a result of the streamlined processes. There will also be some savings to central and local government which are not quantifiable.²¹⁸ The IA acknowledges however that “resource constraints in local authorities could reduce the number of cases considered and so undermine/negate the non-monetised benefits of the [SWG] proposals”; and further, the IA states that “the data and assumptions were tested through the consultation

209 Q 299 [Kate Ashbrook]

210 Written evidence from the Open Spaces Society, para 5.

211 Written evidence from South Somerset Bridleways Association.

212 Q 297

213 Q 370 and IA, p 8.

214 Q 369.

215 Written evidence from Jane Hanney, paras 2 and 3.

216 Q 377. See also written evidence from the Byways and Bridleways Trust.

217 Q 299

218 IA, p 2.

and suggest that the capacity of authorities to process applications is declining and may be overstated in [the IA].”²¹⁹ This point is repeated later in the IA: “cuts in spending on rights of way in local authorities’ finance as a result of the spending review could undermine or negate the non-monetised benefits of the [SWG].”²²⁰

144. The South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations pick up on this point.²²¹ They describe how, when the concept of the cut-off date was suggested by the Countryside Commission in 1999, the Commission was “careful to include” a number of caveats such as “adequate long-term funding”. They also mention how the issue was similarly raised in Natural England’s 2008 report, *Discovering Lost Ways*, and in a 2012 Ramblers’ report on the reduction of funding for rights of way in England.²²² The Ramblers’ report found that nearly 70% of councils had cut their rights of way budgets over the previous three years and that “rights of way, and the teams which look after them, are being disproportionately affected by council funding cuts”.²²³ The South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations concluded that, as a result, there had been a “loss of staff and expertise, to the extent that some local authorities are unable to process modification orders”. They did not believe that the issue had been given “sufficient weight”.²²⁴

145. We have some concerns about the current backlog of rights of way applications and the likely additional pressures caused by the reforms and the imposition of the cut-off date. We question whether the implications for local authorities, in particular, have been fully assessed by the Government. Against this background, if these clauses are to go forward in this Bill, the Government will need to address the impact on local authorities.

Calls for wider reform

Proposals for additional reform

146. Some witnesses supported the SWG proposals but called for wider reforms as well. The Country Land and Business Association (CLA), for example, is a member of SWG but commented that, because the SWG “only considered one small aspect of rights of way” (the recording of unrecorded historic rights of way), “even if implemented in full, the SWG reforms will not redress the present imbalance in rights of way legislation”.²²⁵ The CLA therefore asked for additional reforms to be included in the draft Bill and they set them out in detail in their submission. The NFU, also called for wider reforms, overlapping in part with the CLA.²²⁶ National Parks England (NPE) indicated their support for the package of

219 IA, p 2.

220 IA, p 15, para 8.

221 Written evidence from the South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations.

222 Written evidence from the South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations, p 4.

223 Ramblers report on the reduction of funding for rights of way in England, October 2012, summary.

224 Written evidence from the South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations, p 4.

225 Written evidence from the CLA.

226 Written evidence from the NFU.

proposals (albeit with some suggestions for amendments). Their principal concern was however to “provide evidence in relation to the question whether there are other changes to the deregulatory powers, procedures and parliamentary oversight which should be included in the draft Bill”.²²⁷ The NPE propose a number of amendments to the Road Traffic Regulation Act 1984 (RTRA 1984) and related secondary legislation.

BOATS and UCRs

147. The additional provision which elicited by far the greatest number of responses was that Byways Open to All Traffic (BOATs) and unsealed Unclassified County Roads (UCRs) should be re-classified as Restricted Byways and closed to vehicular traffic. Over one third of responses to our Call for Evidence urged support for this reform..

148. The Peak District Green Lanes Alliance (PDGLA) explained the argument:

The minor rights of way network consists predominantly of unsealed highways. ... Such lanes do not form part of the normal transport network but (apart from agricultural and land management use) mainly serve recreational purposes for both vehicle and non-vehicle users. In the early days of motoring this dual use could be accommodated. However the growing number of heavily powered off-road vehicles, many equipped with deep treads, is now causing unacceptable problems. ... The problems caused are of two types. Firstly, there is physical damage both to the lanes themselves and the wider environment. ... Secondly, there is increasing conflict with non-vehicle users and local communities.²²⁸

149. Patricia Stubbs, of the PDGLA, elaborated on the deregulatory nature of the proposal in oral evidence and also said that it would save “a large amount of public money” because it would reduce the need for repair work.²²⁹

150. The Green Lanes Environmental Action Movement (GLEAM), which supports the PDGLA proposals, also proposed that a right of appeal against inaction or unreasonable refusal by highways authorities in respect of requests for Traffic Regulation Orders under the RTRA 1984 should be created, as a further mechanism for protecting unsealed BOATs and unclassified UCRs against damage by recreational off-road motor vehicles.²³⁰

151. We asked the SWG panel about the issue. Mrs Emrys-Roberts said that it was an issue which had been brought to the attention of Defra by the SWG and that it was “something that needs to be dealt with”.²³¹

Objections to additional reform

152. The Open Spaces Society argued that not only was the “package” a cohesive whole which should be not implemented piecemeal, but that bolting on policies to the package

227 Written evidence from NPE, para 5.

228 Written evidence from the PDGLA, paras 9 to 12.

229 Q 408 [Patricia Stubbs]

230 Written evidence from GLEAM, paras 3, 5 and 15.

231 Q 278

would undermine the consensus underpinning it²³² The Motoring Organisations' Land Access and Recreation Association (LARA) expressed support for the rights of way clauses (although stated that its members were not directly affected by them) and also called for us to resist calls for additional provisions, in particular provisions to change the status of BOATS and UCRs to Restricted Byway status:

These issues have not been before the [SWG], have not been through any process of public consultation, and are not objectively evidence-based. Far from being deregulatory, these proposals will operate to increase local authority and police burdens.²³³

Root and branch reform?

153. We received a number of accounts from members of a group called the Alternative Stakeholder Working Group who have personal and traumatic experience of the current rights of way legislation and are, as a result, very critical of it. We also heard oral evidence from Richard Connaughton and Marlene Masters of the Alternative Stakeholder Working Group. Mrs Masters argued that “there is nothing in this deregulatory Bill that could simplify what is already complicated legislation. There needs to be a complete reform”.²³⁴ We asked the SWG panel about the Group and their complaints. Ms Slade of the CLA said: “They feel they have been let down by the system, but I think to a certain extent I would agree with that. Some of them are CLA members and I am aware of their stories. It is pretty heart-rending stuff ...”.²³⁵

154. We took the view at the outset that we would focus our attention on the clauses in the draft Bill and that we would not consider proposals for additional provisions. Given the level of public interest in rights of way, however, we drawn to the attention of the Government the wider rights of way concerns raised in the course of this inquiry and urge them to take action to meet them.

232 Written evidence from the Open Spaces Society, summary.

233 Written evidence from LARA, summary of key issues.

234 Q 408 [Marlene Masters]

235 Q 285 [Sarah Slade]

5 Other Provisions

Our approach

155. As explained in Chapter 1 of this Report, given the time constraints and the complexity and range of the draft Bill, we were unable to consider each clause of the draft Bill with an equal level of attention. The approach we adopted was to concentrate on those provisions which elicited evidence from a range of interested parties (whilst acknowledging that those clauses which we did not scrutinise in depth may have significant implications which will need to be fully examined when, in due course, the Bill is introduced). We then considered whether there had been adequate consultation underpinning the provisions and whether or not the clauses were deregulatory. Finally, we considered wider concerns about the desirability of some of the clauses, where the evidence we received suggested potentially harmful outcomes.

Evidence base for the draft Bill

156. Dr Cavendish of the Cabinet Office told us that the evidence base for the draft Bill was “a standard one”, with decisions being made by Ministers on the same basis as for any area of Government decision-making.²³⁶ He told us that “the vast majority” of measures in the draft Bill were subject to either formal or informal consultation.²³⁷ We were also told that a number of impact assessments were being carried out but that many were not yet completed. It was estimated that there would be “about 27” impact assessments in total, with only 19 of these available in the public domain at the time we considered the draft Bill.²³⁸

157. The Government set out in a table (“the Consultation Table”) the type of consultation it had held with respect to each clause of the draft Bill. A copy of the table is provided at Appendix 8.²³⁹ The table shows that, of 119 items that could have been consulted on, 65 had no formal consultation, 15 clauses were formally consulted on and 39 were consulted on as part of the Red Tape Challenge (RTC). It was not clear whether the consultations as part of the RTC were as thorough as the other “formal consultations” and it appeared to us that the informal consultations varied in depth and breadth.

Consultation Principles

158. In July 2012, the Government published their Consultation Principles which replaced the Code of Practice on Consultation which had been in existence since 2008. These were subject to review and a revised set was published in October 2013.²⁴⁰ The “governing principle” of the new Principles is stated to be “proportionality of the type and scale of

236 Q 10

237 Q 10

238 Q 53

239 The Consultation Table.

240 See Lords Scrutiny of Secondary Legislation Committee, 17th and 19th Reports, Session 2013-14, HL Paper 75 and 81.

consultation to the potential impacts of the proposal”.²⁴¹ The Principles also state that “thought should be given to achieving real engagement rather than merely following a bureaucratic process”.²⁴² It is suggested that a consultation “might typically vary between two and 12 weeks”, a point criticised by the Lords Secondary Legislation Scrutiny Committee which recommended that the “minimum feasible” consultation was six weeks, save in very exceptional cases,²⁴³ and this contrasts with the 2008 Code which stated that the minimum should be 12 weeks with consideration given to a longer period “where feasible and sensible”.²⁴⁴

Adequacy of the consultation on specific clauses

159. We received strong evidence that the consultation on some clauses was inadequate. In particular we heard criticism of the consultation on clauses 9, 28, 40 and the order-making power.

Order-making power

160. Given the Law Commissions’ role in drafting SLR Bills and the proposal that they should be statutory consultees under the new power, we were surprised to hear their criticisms of the consultation by Government with them about clause 51 (the order-making power). The Law Commission described the consultation as a “limited informal discussion” before the publication of the Bill, with meetings held at their request with the Minister and officials following its publication.²⁴⁵

Clause 9

161. The informal consultation process on clause 9, which deals with the authorisation of insolvency practitioners, was also criticised by witnesses. We were told by R3, an organisation which represents 97% of UK insolvency practitioners, that there had been no formal consultation and that they had not seen the proposal in the consultations that had been issued.²⁴⁶ We were told that the clause had “come into the Bill without a great deal of discussion beforehand”.²⁴⁷

162. The Consultation Table indicates that there was only informal consultation on this clause. However, the Insolvency Service told us that they believed there had been a “proper consultation process” in 2010, which included a consultation letter to all key stakeholders inviting views on the authorisation proposals and a stakeholder meeting.²⁴⁸ The Insolvency

241 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

242 Ibid

243 17th Report, Session 2013-14, HL Paper 75, para 9.

244 Code of Practice on Consultation (2008), criterion 2.

245 Q 57

246 Q 340

247 Q 339

248 Written evidence from the Insolvency Service.

Service confirmed that R3 had raised concerns as part of the consultation and that these views were taken into account by Ministers.²⁴⁹

Clause 28

163. The consultation process on clause 28, which deals with model clauses in petroleum licences, was criticised by Professor Daintith, a Fellow at the Institute of Advanced Legal Studies, who was not aware of any consultation on the proposal.²⁵⁰ Officials from DECC told us that the Department had only written to one representative body—Oil and Gas UK—on the subject and had not received a response. The Department took this to mean that the suggestion “did not seem to concern them [Oil and Gas UK] in any way”.²⁵¹ Professor Daintith criticised this approach to consultation, saying that: “the issue is one of public control, not discussions with Oil and Gas UK”.²⁵² We consider this provision further in paragraphs 215 to 217 below.

Clause 40

164. We also heard evidence that the consultation on clause 40, which concerns repeal of powers to provide accommodation to persons temporarily admitted to the UK, was insufficient.²⁵³ The Immigration Law Practitioners Association (ILPA) told us that the provision was published in the draft Bill without any warning despite the fact that there were regular Home Office sub-committee meetings to which the proposal could have been brought.²⁵⁴ Refugee Action said that they were “disappointed” that they were not consulted by the Home Office despite being a key stakeholder for consultation and engagement on asylum support related matters.²⁵⁵ They said they were not aware that the repeal provision would be included in the draft Bill until they were informed by an email from the Home Office on 3 September 2013.²⁵⁶ Similarly, the ILPA commented that, if it had not been for the pre-legislative scrutiny, the clause would not have come to their attention.²⁵⁷ This was of concern to the ILPA as they had strong objections to the clause on the grounds that the repeal would engage three articles of the European Convention on Human Rights (ECHR).²⁵⁸ Refugee Action suggested that local government and the devolved governments should be consulted about the proposal, if they had not been already, as burdens could fall upon them if this clause was introduced.²⁵⁹ (We examine this clause in more detail in paragraphs 213 to 233 below).

249 Written evidence from the Insolvency Service.

250 Q 250

251 QQ 251-253

252 Q253 [Professor Daintith]

253 Q 320

254 Q 321

255 Written evidence from Refuge Action.

256 Written evidence from Refuge Action.

257 Q 321

258 Q314

259 Written evidence submitted by Refuge Action, para 7.

Government response

165. Mr Clarke told us that the aim of the Government was to make consultation “proportionate” and that it was not always appropriate to carry out lengthy consultations.²⁶⁰ We note also Mr Letwin’s comments that, in his view, it was not always necessary to consult on a proposal; he referred, in particular, to the clauses dealing with the erection of public statues in London (clause 19), the repeal of the power to make provision for blocking injunctions (clause 26) and the power to spell out dates described in legislation (clause 49).²⁶¹

166. Mr Letwin also defended the Government’s use of informal consultations, citing clause 9 as an example: “You should not imagine that this informal consultation is some sort of gay walk in the park. It is a serious effort to get clear what the professions and others in relevant cases thought”.²⁶² We note, however, his confirmation that the Government would be “more than willing” to undertake a formal consultation on any clauses which we recommended needed this process.²⁶³

167. With regard to the time and quality of consultation on provisions in the draft Bill, Mr Letwin told us that the reason why the Government decided to publish the Bill in draft form and seek pre-legislative scrutiny was to enable the Government to benefit from the evidence and consultation carried out by the Joint Committee. He described pre-legislative scrutiny as a “super consultation”, commenting that he did not know of any formal consultation process “that evokes so much actual intellectual attention to the Bill”.²⁶⁴ He said:

In some cases there are requirements that we consult, in which case we have consulted, but where there are not we are relying on the consultation that you are doing, the evidence you are hearing and the report you will make. If we discover from things you say that there are reasons why we ought to go out to further formal consultation, we will certainly do so.²⁶⁵

Conclusions on consultation

168. **While we very much welcome the opportunity to carry out pre-legislative scrutiny on the draft Bill, we are clear that our scrutiny is not part of the consultation process that should be carried out by Government. Government should not rely on Parliament to consult on their behalf. However, they should take note of the evidence we received.**

169. We accept the Government’s view that it is not necessary for a full consultation to be held on all matters that are covered in this draft Bill, and agree with the Minister that there are some clauses which clearly need little consultation. **However, we conclude that the consultation carried out by the Government for a number of provisions in this Bill is**

260 Q 522 [Mr Clarke]

261 Q 520

262 Q 542 [Mr Letwin]

263 Q 542 [Mr Letwin]

264 Q 542 [Mr Letwin]

265 Q 522 [Mr Letwin]

inadequate. We are unable to comment on the adequacy of the consultation for clauses we did not examine in depth but we would encourage the Government to review critically the extent of its consultation on all clauses before the Bill is introduced to Parliament.

170. We were pleased to note the Minister’s commitment to consult further on clauses that we identified needed fuller consultation. We recommend that further consultation is carried out on clauses 9, 28 and 40.

Deregulatory extent of the draft Bill generally

171. The Government’s definition of “deregulation” or deregulatory measures, in the context of the draft Bill, was described to us by an official as “measures that are meant to remove a burden on somebody or something”.²⁶⁶ The official explained that “it is deliberately quite a wide definition that will include burdens that have little, if any, practical effect, but they are still there in law”.²⁶⁷ Mr Letwin told us that the purpose of deregulation was to “have a real life effect of making it easier for people to go about their business and for the economy and society to prosper”.²⁶⁸

172. We note that the definition of “deregulatory” as used in the Legislative Reform Order process is to remove or reduce “any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation”.²⁶⁹ “Burden” is defined in section 1(3) of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) as meaning: a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.²⁷⁰

173. We asked business groups for their view of the draft Bill in terms of its deregulatory impact. The Institute of Directors (IoD) did not think the Bill had gone far enough in deregulatory terms, noting that the Bill does not contain “... any big, talismanic deregulatory activity that, for the IoD’s purposes, would say ‘this is a fantastic endeavour’. It is good work, but it is not ... the red meat of deregulation”.²⁷¹ The Forum for Private Business told us that they were “non-plussed” by the draft Bill, with the savings to business being “small-fry”.²⁷² The IoD commented that there was a “difference between a Deregulation Bill and a Great Repeal Bill”.²⁷³

174. Ministers defended the deregulatory extent of the Bill. We heard that the draft Bill “removes some things that have a net cost for business ... but it also removes clutter from the statute book”.²⁷⁴ Mr Letwin told us that in his experience there is:

266 Q 3 [Charlotte Spencer]

267 Q 3 [Charlotte Spencer]

268 Q 512

269 Written evidence from the Cabinet Office, para 3. See section 1(2) of the 2006 Act.

270 Written evidence from the Cabinet Office, para 3.

271 Q 360 [Alexander Ehmann]

272 Q 363

273 Q 362

274 Q 511

no measure you can possibly imagine which will not have differing effects of differing kinds. You do not get univocal measures that just have deregulatory impact. There is always something else going on. What you have to judge is the balance.²⁷⁵

Mr Letwin thought that “every measure in here in one way or another contributes to one part or another of that complex tapestry” of the economy and society.²⁷⁶

Whether particular clauses are deregulatory

Order-making power and growth duty

175. Evidence suggests that neither the order-making power (clause 51) nor the growth duty (clauses 58 to 61) are deregulatory. With regard to the order-making power, we note the Government have said that the point is not to reduce burdens but “to avoid the confusion ... caused by the presence on the statute book of legislation which is no longer of practical use”.²⁷⁷

Clause 29

176. Under section 46 of the Environmental Protection Act 1990 (EPA), a waste collection authority may by notice require occupiers of premises to present their household waste for collection in a specified way. Failure to comply with the requirement is an offence under the EPA. Clause 29 of the draft Bill replaces the criminal offence with a civil penalty in England; it is this change that the Government argue is a reduction of burdens on householders in England.²⁷⁸ The civil penalty will consist of a fixed monetary penalty, which can only be imposed following a written warning.

177. A formal consultation was held on this clause.²⁷⁹ Two options were offered in the consultation: the first was that the civil penalty should be introduced, but underpinned by a criminal offence; the second was the version in the draft Bill. Of the 106 respondents who expressed a preference, about two thirds favoured the first option.²⁸⁰

178. We heard evidence that this clause would introduce more bureaucracy and burden on local authorities. Councillor David Simmonds, who was otherwise supportive of the draft Bill, felt that clause 29 was the “one potential burden” of the Bill.²⁸¹ Essex County Council told us that the criminal offence had been an “ultimate sanction” that they would not want removed and commented that the proposed new process was longer and more bureaucratic.²⁸² Although the sanction, we were told, had never been used in Essex and had

275 Q 513

276 Q 511

277 Written evidence from the Cabinet Office, para 5.

278 Notes to draft Bill, p22 para 128

279 Consultation table, appendix 8.

280 Summary of responses to the consultation on amending the powers of local authorities regarding presentation of household waste for collection, DEFRA, July 2012, paras 2.1-2.2. Of the 106 respondents, 96 were local authorities, their representative organisations or other public bodies.

281 Q386

282 Q255

limited use around the country, it was seen as a useful deterrent against minority behaviour that had a “quite significant” potential cost to authorities.²⁸³

179. It was also argued that given the limited and proportional use of the criminal sanction—on average, just over two penalties per council area each year, or one for every 26,000 households²⁸⁴—there was not a significant burden being removed from householders. In contrast, the new burden on local authorities may be significant. Hammersmith and Fulham Council set out problems with the proposed process, including the fact that it would be “much more intensive on officers’ time and will require a whole new administrative function, with an appeals process, to be established”. They also thought that the system would be open to abuse and regular offenders could “play the system very easily”.²⁸⁵ Essex County Council thought that it would be a slower process and require lots more warnings,²⁸⁶ while the LGA commented that it was likely to result in behaviour that is contrary to Government policy to reduce contamination of recycling.²⁸⁷

180. The UK Environmental Law Association (UKELA) said that the clause was not “necessarily a deregulatory measure” although they thought that it might allow for better regulation.²⁸⁸ They argued that criminal sanctions should be reserved for the most serious and culpable offences that cause damage to the environment.²⁸⁹ The clause was also welcomed by Big Brother Watch, who—in contrast to evidence from local authorities—thought that the new process would “ultimately reduce the administrative burden on councils”.²⁹⁰ It was not clear how they thought this might happen, however.

181. In passing we note the letter of 13 April 2012 to Lord Taylor of Holbeach, the (then) Parliamentary Under Secretary at Defra, from disability groups and the LGA.²⁹¹ The letter warned that the removal of criminal sanctions may impact on how clear streets are of bins and bags, which may affect the ability of movement for all people who use the streets, in particular older people, disabled people who use mobility aids, those with sight loss, people on the autistic spectrum and families with young children in push chairs.

Clause 33 and Schedule 14

Burden shifting

182. Clause 33 introduces Schedule 14, which is concerned with the reduction in burdens relating to schools in England. The schedule contains a number of measures, of which the most controversial appeared to be the proposal for schools to set their own term dates;

283 Q255-256 [Robert Overall]

284 Q257 and written evidence from the LGA, para 16

285 Written evidence from the London Borough of Hammersmith and Fulham, para 2.4

286 Q 263

287 Written evidence from the LGA, para 20

288 Q 260

289 Q 260

290 Written evidence from Big Brother Watch.

291 http://www.local.gov.uk/c/document_library/get_file?uuid=9441193f-6c53-4ff5-a570-3a92b39265e7&groupId=10180
Letter from Age UK, Disability Rights UK, Living Streets, LGA, Royal National Institute of Blind People.

head teachers to become responsible for school discipline; the removal of requirements to have regard to guidance on staffing matters; and, the removal of home-school agreements.

183. We heard some evidence that asserted that the measures on school terms and staffing matters were not considered to be lifting a burden but simply transferring a burden to others. Other evidence claimed that the proposed measure on school discipline was not regarded as a “burden” as such and it was not appropriate to move it as proposed.

184. NASUWT and the National Governors’ Association (NGA) agreed that the provision on determining school terms transferred a burden that had previously been held by local authorities on to individual schools and, in some instances, parents.²⁹² The NGA told us that it was “an additional responsibility and an additional burden ... potentially, it does create quite a big burden”.²⁹³ The nature of the burden would come from schools needing to co-ordinate as well as from the implications for families with children in different schools. The Association of Teachers and Lecturers (ATL) pointed out that the Government have shifted the burden on to governing bodies, who will need to consult parents and co-ordinate with other schools and the local authority. Indeed, parents with children at more than one school may be burdened with multiple consultations.²⁹⁴ NASUWT commented that they did not “understand what the problem is that the Government think they are trying to solve by saying that we need to deregulate” school terms.²⁹⁵

185. In respect of the provision on staffing matters, the NGA suggested to us that “removing the guidance does not remove the burden”.²⁹⁶ NASUWT commented that they were not sure what problem is trying to be solved, and said that the removal of statutory guidance “has the potential to put enormous burdens on schools”.²⁹⁷ On the provision to move the responsibility for behaviour policy to a head teacher, witnesses could not understand why there was a need for the provision and warned about adverse consequences. NASUWT told us that they did not think one could deregulate responsibility while school governors remained accountable in law for behaviour and discipline.²⁹⁸

186. We put it to the Minister that the school term provision was putting an additional burden on schools. Mr Letwin responded that it was part of a balancing act:

We think that, on the whole, the forces of localism, competition and the market produce better results than greatly planned economies. That is a deregulatory measure. It is, of course, the case that, if you are a parent and you would have preferred to see somebody make a rule that meant your children’s term times were utterly aligned, then you may feel that it is more of a burden on you. That principle,

292 QQ 192 and 194

293 Q 194

294 Written evidence from the Association of Teachers and Lecturers.

295 Q 192 [Chris Keates]

296 Q 216 [Gillian Allcroft]

297 Q 216 [Chris Keates]

298 Q 210

if extended across the board, would lead back to central planning and we are trying to get away from that.²⁹⁹

Beyond the question of whether or not provisions were in fact lifting a burden, we received evidence about the potential consequences of the changes. We examine these further in paragraphs 218 to 227, below.

Other clauses

187. We also heard concerns that other clauses were not wholly deregulatory, or that they passed a burden, albeit sometimes a lesser one, on to another body. This included clause 28 (model clauses in petroleum licences), which one witness, Professor Daintith, argued was not deregulatory because “the only regulatory burden it removes is one on the Minister to bring the rules he or she is making to the notice of Parliament”.³⁰⁰ It was also argued that clause 3 (simplification of English apprenticeships), placed a burden on employers: the Federation for Industry Sector Skills and Standards (FISS) told us that their major concern was that the “burden of bureaucracy” would be shifted from “about 3,500 training providers ... to about 139,000 employers”.³⁰¹ We examine the wider concerns around these clauses in more detail in paragraphs 215 to 217 and 203 to 209 below.

Conclusions on deregulatory extent

188. We accept that the occasions on which a proposal can be said to be unequivocally and purely deregulatory, without any burden shift at all, will be rare and that almost invariably an assessment of deregulatory extent will be a question of offsetting burdens removed against burdens shifted. **In our view, for some of the provisions in the draft Bill—such as decriminalisation of household waste (clause 29)—the balance may well have resulted in an overall increase in burdens with a greater burden being placed on one party than is lifted from another.**

189. **We recommend that, before the Deregulation Bill is introduced into Parliament, the Government should ensure that the overall effect of each and every provision in the Bill is demonstrably deregulatory so that the Houses may be satisfied that each is within scope of the Bill.**

Wider concerns

190. We heard a range of evidence in which concerns were expressed about the potential wider effect of a number of clauses. Given the constraints on our time, we were not able to look at all clauses in equal depth, but our scrutiny revealed concerns in particular about: new health and safety provisions (clause 1); removal of employment tribunals’ power to make wider recommendations (clause 2); simplification of English apprenticeships (clause 3); authorisation of insolvency practitioners (clause 9); rights of way (clauses 12 to 18) (see Chapter 4 to this Report); reduction of burdens on schools (clause 33 and Schedule 14); repeal of Senior President of Tribunals’ duty to report on standards (clause 35); repeal of

299 Q 516

300 Written evidence from Professor Daintith.

301 Q 355 [Mark Froud]

powers to provide accommodation to persons temporarily admitted to the UK (clause 40); and, repeal of duties relating to consultation or involvement (clause 47).³⁰² We have already expressed the caveat, in Chapter 1, that, in selecting these provisions, we should not be taken to be positively endorsing other provisions.

Clause 1

191. We received a relatively large amount of evidence, both written and oral, on clause 1 (Health and Safety at work: general duty of self-employed persons). This clause exempts from health and safety law those self-employed persons who have no employees and whose workplace activities pose no potential risk of harm to others. The general duty with respect to health and safety on self-employed persons would be confined to those who conduct “a relevant undertaking”. Such an undertaking is one of a prescribed description (which would cover high hazard or high risk industries or activities) or is not prescribed in this way but is an undertaking of such a kind that persons who may be affected by it (other than the person conducting it or his employees) could be exposed to risks to their health and safety. We were told by the Health and Safety Executive that the list of prescribed descriptions would be made through regulations and that the duty could still apply to individuals even if their activity was not listed.³⁰³

192. The clause was subject to formal consultation, although the Government told us that the consultation revealed “no clear consensus of opinion”, with a significant number of respondents preferring no change to the law.³⁰⁴ This was reflected in the evidence we received.³⁰⁵

193. Witnesses argued that relatively little burden would be lifted by the provision while risks would be increased. The IOSH was clear that the burden of health and safety on the self-employed was minimal, risk assessments being “such a quick and easy thing” that a child could do it.³⁰⁶ The TUC’s view was that a burden was not being lifted because the situation would not change for “those who genuinely do not pose a risk to others and only creates complete confusion for all the other self-employed”.³⁰⁷ The Royal Society for the Prevention of Accidents (RoSPA) told us that, in their view, self-employed lone workers who work at home are “de facto, already exempt”.³⁰⁸

194. The IOSH told us that the clause was “unnecessary, unhelpful and unwise”.³⁰⁹ They identified the risks from the clause as being: lower health and safety standards for the self-employed and those affected by their activities; confusion with some wrongly believing they are exempt; and encouraging the “unscrupulous” to take more risk.³¹⁰ The TUC believes that the clause would “create confusion and uncertainty in a sector which already

302 We have already raises issues with regard to clauses 9 and 40 earlier in this chapter.

303 Written evidence from the HSE.

304 Written evidence from the Cabinet Office, p 2.

305 Written evidence from RoSPA, TUC, UNISON, Institute of Ergonomics and Human Factors, IOSH, Voice and Arco.

306 Q 153

307 Written evidence from the TUC, p 2.

308 Written evidence from RoSPA.

309 Written evidence from IOSH, para 1a.

310 Written evidence from IOSH, para 17.

has a much higher fatality, injury and ill-health rate” than others.³¹¹ It argues that given the most dangerous industries have a high proportion of self-employed people in them, “anything that confuses the situation is a recipe for disaster”.³¹² RoSPA were concerned that the exemption from health and safety could be misunderstood and send the wrong signals to individuals in higher risk settings. They also highlighted the risk to the self-employed who in practice actually work for clients as employees.³¹³ This concern was shared by the TUC and UNISON.

195. The Broadcasting Entertainment Cinematograph and Theatre Union (BECTU), around half of whose members are self-employed, were concerned that the clause goes too far, lacked clarity and had the potential to be abused by both workers and engagers. They believed that the clause would have an impact on the labour market within the broadcasting industry, with individuals who raised health and safety concerns finding it more difficult to secure future work.³¹⁴

196. On the other hand, there was support for the clause from business. The FSB believed that the clause would help the perception of health and safety, and pointed to the risk that health and safety could become “trivialised because it is applied in what people see as inappropriate circumstances”.³¹⁵ The BCC viewed the clause as bringing UK Health and Safety Law into line with best practice internationally, pointing to Germany and Sweden as examples.³¹⁶ The North East Chamber of Commerce (NECC) viewed the clause as an opportunity to free resources (that is, time and capital) for start-up businesses.³¹⁷

Clause 2

197. Clause 2 removes the power of employment tribunal, in discrimination cases where there has been a finding of breach of the Equality Act 2010, to make a wider recommendation. A wider recommendation is a recommendation which relates to persons other than the complainant. The clause was consulted on by the Government and we were told that all business representative groups who responded supported the repeal and that the other responses “did not provide any compelling argument or evidence to support its retention”.³¹⁸

198. We received large amounts of evidence on this clause, much of which highlighted the fact that the power has been rarely used in the short time it has been in existence.

199. Evidence from business groups supported the clause. The BCC told us it was a welcome change, saying that the measure extended the tribunals’ jurisdiction beyond the “time, information and expertise of the panel”.³¹⁹ The CBI agreed that tribunals could not

311 Written evidence from the TUC, p1. The TUC cite the fatality rate for the self-employed as 1.1 per 100,000 as against 0.4 per 100,000 for employees.

312 Written evidence from the TUC, p 2. Examples of such industries were: agriculture and construction.

313 Written evidence from RoSPA, p 2.

314 Written evidence from BECTU.

315 Q 151 [Graeme Fisher]

316 Q 132

317 Written evidence from NECC.

318 Written evidence from the Cabinet Office, p 3.

319 Written evidence from the BCC, p 2.

be expected to have the information and understanding of an individual company to make the recommendations meaningful.³²⁰ The FSB welcomed the clause, although it did not anticipate a significant tangible effect as the power is rarely used.³²¹ The BCC recognised that there was an issue of proportionality in that there had only been a small number of cases,³²² but they suggested that the reputational risk of a wider recommendation is something an employer would take into account when making a decision whether or not to settle out of court.³²³ They argued that this was a reason for removing the power.

200. Other witnesses believed that the repeal of the power was unnecessary, premature and the case for it not evidence-based. The EDF believed that the power remaining would “lead to less litigation rather than more” and that if recommendations are implemented properly it could save employers future costs.³²⁴ We were told that the number of cases could not point to the power being “onerous”,³²⁵ and the TUC described the removal of the power as “completely disproportionate”.³²⁶ They continued:

It just seems ridiculous to get rid of a piece of legislation that only affects employers who have broken the law. This is not sweeping through a whole swathe of businesses that are doing the right thing. Where businesses have broken the law, they quite often find it useful to have the tribunal help them to get things right.³²⁷

201. The National Union of Journalists (NUJ) told us they were “very concerned” at the proposal and believed it was “far too early in the life of the Equality Act to repeal this provision”. They pointed to the fact that there had been 19 cases where Tribunals had issued wider recommendations in 2012 and suggested that this was neither inappropriate nor excessive and that the power had been used in a “careful and reasonable manner” by tribunals.³²⁸ The EHRC saw the power as being useful, for both the company to whom a recommendation is made and to the Commission in following up tribunal decisions. It did not think that sufficient evidence had been collected to decide whether or not the power should be abolished and suggested instead that it be reviewed.³²⁹ The absence of evidence in favour of this clause was raised by the National Aids Trust, the Discriminatory Law Association, EDF, UNISON and the Public and Commercial Services Union.

202. The Equal Rights Trust suggested that the removal of the power would leave the UK in “clear violation of its obligations” under the International Covenant on Civil and Political Rights, which states that there should be measures “beyond a victim-specific remedy to be taken to avoid recurrence of the type of violation in question”.³³⁰

320 Written evidence from the CBI, para 4.

321 Written evidence from the FSB, paras 13-14.

322 Q 142

323 Q 142

324 Q 148

325 Q 148

326 Q 141

327 Q 141

328 Written evidence from the NUJ.

329 Q 146

330 Written evidence from The Equal Rights Trust, para 15.

Clause 3

203. Clause 3 concerns the simplification of English apprenticeships. The measures revoke the minimum standards for English apprenticeship frameworks, which are currently set out in the Specification of Apprenticeship Standards for England (SASE). The changes do not affect apprenticeships in Wales. Delegated powers will permit Ministers to require apprenticeships to satisfy “specified conditions” and issue certificates to those who complete apprenticeships.

204. An apprenticeship is a combination of paid employment and training towards achievement of a recognised standard. In 2012 an independent Review of Apprenticeships was published, which recommended that the Government improve the quality of apprenticeships and make them more focused on the needs of employers.³³¹ The aim of the clause is to give employers “direct control over apprenticeship training, allowing them to focus on what they actually value”.³³²

205. The evidence on this clause was mixed: business groups were supportive of the changes while others were concerned that the removal of the SASE would lead to a drop in quality of apprenticeships. The FISSS described SASE as being “incredibly complicated, very detailed, but also at the same time very vague”³³³ and welcomed the flexibility that a new Apprenticeship Standard that is defined by employers would bring.³³⁴ They told us that they thought the Government were looking “to raise the standard of apprenticeships and not dumb them down”.³³⁵ The BCC welcomed greater innovation in the delivery of apprenticeships and a lighter-touch by Government, saying that it is currently “more of a process than a standard”.³³⁶

206. There were concerns, however, that the removal of the standard would lead to a drop in quality of apprenticeships. The Association of Employment and Learning Providers (AELP) believed that the removal of all restrictions and standards could undermine the quality of some apprenticeships and “seriously damage [the] reputation of the programme” thereby decreasing the numbers of employers and apprenticeships willing to be involved.³³⁷ AELP said that while flexibility to a certain extent was welcome, a framework was still needed, albeit a more flexible one. They said that by removing SASE, the draft Bill creates a gap that still has to be filled.³³⁸ NASUWT commented that the removal of the standard gave too much flexibility and there was a danger that apprenticeships would be brought down to “the lowest common denominator”.³³⁹

207. While there are clearly arguments on both sides for the removal of the SASE, we were particularly concerned to hear evidence that suggested that having different standards in

331 The Richard Review of Apprenticeships, November 2012.

332 Explanatory Notes, p38, para 237.

333 Q 355 [Mark Froud]

334 Written evidence from FISSS.

335 Q 356

336 Written evidence from the BCC.

337 Written evidence from the AELP.

338 Q177

339 Q175

England and Wales would have a negative impact on the employment prospects of Welsh young people and could cause problems for businesses with employees in both countries. Several witnesses raised concerns about the fact that the proposals are only for English apprenticeships. The Association of School and College Leaders (ASCL) told us that they thought there were “genuine risks to young people in Wales in terms of the portability and currency of their experience and qualifications. It could be a risk to the mobility of the work force if too much of a gap opens up and there is not enough understanding” in England of the standards of a Welsh apprenticeship.³⁴⁰ NASUWT agreed that the opportunities for learners in Wales may be “compromised”.³⁴¹ The FSB told us that they thought it was important that apprenticeships are transferrable across borders.³⁴²

208. We were also concerned at suggestions that a burden was being placed on employers. The AELP, for example, thought that a disparity across the UK could lead to problems for national employers.³⁴³ They told us that many employers will have employees in Wales, Scotland and England and that “they would not want to run three different systems”.³⁴⁴ The FISSS made a similar point, saying that the “big issue” was that an employer operating across four nations in the UK would not want to end up with four completely different systems.³⁴⁵ The Forum for Private Business agreed with this point.³⁴⁶ The CBI, however, told us that “business understands that these reforms will only take effect within England and recognises them as a welcome step forward”.³⁴⁷

209. The FSB identified a risk that if small businesses were required to pay the full cost of external training upfront they may suffer cash-flow problems and this could put employers off engaging.³⁴⁸

Clause 9

210. Clause 9 introduces a new regime of partial authorisation of insolvency practitioners, enabling insolvency practitioners to be authorised in relation to companies only or individuals only. Currently, individuals who are authorised to act as insolvency practitioners are authorised in relation to all categories of appointment. The Government said that the new regime will increase accessibility to the profession and improve competition. It will also reduce the cost of training and ongoing regulation for applicants who wish to specialise.³⁴⁹

211. A number of concerns about clause 9 were brought to our attention. They related to a variety of aspects: the consultation process (see paragraphs 161 and 162 above); a question as to the deregulatory extent of the clause; the potential for a reduction in professional

340 Q 187 [Ian Bauckham]

341 Q 186

342 Written evidence from the FSB.

343 Written evidence from the AELP.

344 Q 190 [Stuart Segal]

345 Q 357 [Mark Froud]

346 Q 357 [Alexander Jackman]

347 Written evidence from the CBI para 6.

348 Written evidence from the FSB, para 17

349 Explanatory Notes, p 139, para36.

standards; the potential for it to be anti-competitive; and, the fact that the proposal could not work in Scotland.

212. R3 said that the split profession was “not going to make things more competitive and it is not going to make it more accessible ... it is going to add another level of regulation to the existing framework”.³⁵⁰ They told us that “it is very important that an insolvency practitioner has the full breadth of understanding of the options that are available for corporate and personal insolvency” as the extent to which advice is going to be needed on elements of personal or corporate insolvency in individual cases is not always clear.³⁵¹ The Insolvency Lawyers’ Association suggested that the tiered system of authorisation would be more expensive to regulate and monitor, it may discourage competition in that corporate insolvency work would remain the preserve of very large practices, and the narrowing of expertise could result in a lowering of standards at entry level to the profession.³⁵² This latter point was echoed by Institute of Chartered Accountants in England and Wales (ICAEW).³⁵³

213. The dangers for the profession in Scotland were brought to our attention by a number of witnesses.³⁵⁴ As the Law Society of Scotland explained, in England bankruptcy and corporate insolvency legislation is separate but in Scotland significant parts of corporate insolvency are linked to bankruptcy legislation. It questioned whether “anyone could be an effective corporate Insolvency Practitioner in Scotland if they possessed little or no knowledge of bankruptcy legislation”.³⁵⁵

214. The Insolvency Service told us that there was “broad support” for the clause from a range of stakeholders, including some practitioners themselves.³⁵⁶ We did not receive evidence to reflect that view. **In paragraph 170 above, we have recommended that clause 9 should be the subject of further consultation. We encourage the Government to ensure that all relevant stakeholders are given an opportunity to air their views.**

Clause 28

215. We received conflicting evidence about the significance of the proposal to enable the Secretary of State the choice of prescribing model clauses in petroleum licences either by regulations subject to negative procedure or in a published document. Mr Clarke said that the model clauses were “entirely technical” and of “no earthly interest to Parliament”.³⁵⁷ Professor Daintith, however, told us:

It might be thought that a power to review what are simply “model” clauses could not be of very great significance. The opposite is the case. The United Kingdom,

350 Q 332

351 Q 332. This point is also made by ICAEW in their written submission.

352 Written evidence from The Insolvency Lawyers’ Association.

353 Written evidence from ICAEW.

354 Written evidence from R3, The Law Society of Scotland and ICAS.

355 Written evidence from The Law Society of Scotland, para 12.

356 Written evidence from The Insolvency Service. Under the Scotland Act 1998, insolvency is a reserved matter with legislation extending to Scotland being made by the Westminster Parliament, subject to certain limited exceptions where the Scottish Parliament has the power to enact legislation.

357 Q 517

unlike most other oil-producing nations, does not set out in legislation or in regulations the terms under which oil and gas companies may exercise rights to explore for and exploit onshore and offshore oil and gas. Many key controls on companies are instead given legal effect by the detailed and extensive clauses of the licences under which they operate. These licences, legally speaking, are individual contracts between the Minister and each licensee.³⁵⁸

216. The DPRRC also commented that “the subject matter of some of the model clauses presently in force ... does not strike us as being necessarily free from controversy” (for example, model clauses dealing with the abandonment and plugging of wells);³⁵⁹ and the committee concluded that it was “unpersuaded” by the explanation for the new power, as set out in the delegated powers memorandum, and, as a result, queried whether it amounted to an appropriate delegation.³⁶⁰

217. We recommend in paragraph 170 that the Government undertake further consultation on this provision. Furthermore, we recommend, in the light of responses to that consultation, that the Government consider whether the clause is in scope of the Bill and whether the delegation is fully justified.

Clause 33 and schedule 14

218. As mentioned previously, Schedule 14 contains a number of measures which the Government have said are aimed at reducing burdens on schools. We received most evidence on term times, behaviour policy, staffing matters and home school agreements. There was support for the home school agreements measure, and mixed support for the term time setting proposals. Neither the staffing matters nor the behaviour policy proposals received support in the evidence we received. None of the proposals were formally consulted on.

Term times

219. The Government told us that the effect of the deregulation of term times will be “to give head teachers and governing bodies more autonomy to decide how to organise their school year in the best interests of pupils, their parents, teachers and the local community”.³⁶¹ Around 70% of secondary schools and 30% of primary schools already have this freedom but “many have chosen not to make changes”.³⁶² The Government said that they intended to provide non-statutory advice for schools and expected schools to consult and co-ordinate where appropriate. We were told that informal consultation by the Department for Education indicated “broad support” for the proposal.³⁶³

358 Written evidence from Professor Daintith.

359 Written evidence from the DPRRC, para 10.

360 Written evidence from the DPRRC, para 11.

361 Written evidence from the Cabinet Office, p 15

362 Written evidence from the Cabinet Office, p 15

363 Written evidence from the Cabinet Office, p 17. Views were sought from the DfE’s Reducing Bureaucracy Reference Group (the head teacher members), LGA, Association of Directors of Children’s Services, ASCL, NAHT, NUT, ATL, Family and Childcare Trust, Mumsnet, Netmums and FSB.

220. ASCL told us that “the risks in deregulating in this area are fairly minimal” and they believed that it was likely that the local authorities would continue to provide guidance and schools would be under pressure to maintain cohesion on term dates within a given area.³⁶⁴ Voice, however, argued that school terms is an area “which is ripe for more, rather than less regulation”.³⁶⁵

221. NASUWT were concerned that, without “a lever” in the system, schools will be tempted to experiment, which may cause problems.³⁶⁶ Examples of problems—in particular for families with children in different schools—included childcare costs and “family costs” if families are not together during holidays.³⁶⁷ Voice told us that it will “complicate the lives of working parents”³⁶⁸ and warned that it may be disruptive as more children are taken out of school for family holidays. NASUWT highlighted particular issues for working mothers and the impact “upon their ability to stay in work or upon child-care costs” and called for an Equality Impact Assessment on the clause.³⁶⁹ Cost implications were also raised as a problem for local authorities trying to co-ordinate school transport.³⁷⁰

Behaviour policy

222. The draft Bill will clarify that head teachers will no longer need to have regard to a written statement of principles, drafted by the school governing body, when determining the school behavioural policy. Currently, the statement of principles is prepared by governors prior to the policy being drafted. The Government believe that this provision reflects current practice, arguing that in many cases governing bodies “interpret this duty in a variety of ways”.³⁷¹ We were told that an informal consultation was held on this provision.³⁷²

223. A number of witnesses took the view that governors should still be involved in the drafting of the behaviour statement. ASCL said that it was “really important that governing bodies take responsibility for setting these policies”.³⁷³ The NGA agreed with this and the NASUWT highlighted issues associated with the provision arising from circumstances where head teachers write the policy but governors are legally answerable for it.³⁷⁴

364 Q 192 [Ian Bauckham]

365 Written evidence from Voice.

366 Q 192 [Chris Keates]

367 Q 193

368 Written evidence from Voice.

369 Written evidence from NASUWT.

370 QQ 192 [Chris Keates] and 193

371 Written evidence from the Cabinet Office, p 13.

372 Written evidence from the Cabinet Office, p 13. The proposed change was raised at a meeting of the Advisory Group on Governance on 14 March 2013. A paper was circulated and Members invited to comment.

373 Q210 [Ian Bauckham]

374 Q 210

Staffing matters

224. The Government propose to remove statutory guidance for maintained schools in respect of the appointment, discipline, suspension and dismissal of staff. The Government told us that they had considered the current guidance and concluded that it provides nothing more than a restatement of the requirements imposed by the School Staffing (England) Regulations 2009. They considered that the guidance added no value, was “superfluous”, and said that they intended to replace guidance with signposting to external sources of information.³⁷⁵ No formal consultation was held on this provision.

225. With respect to staffing matters, the main concern raised in evidence was about the burden on schools to seek out, and meet the costs of, their own advice on staffing matters. NASUWT told us that there was an issue of duplication and value of public money “in terms of schools taking legal advice on a whole variety of things where broad statutory guidance could put a framework in place”.³⁷⁶ The consistency of statutory guidance was also put forward as a reason for its retention.³⁷⁷ All witnesses at our education session disagreed with the Government’s view that the current guidance was merely a duplication of the School Staffing Regulations and that the guidance had no value to schools.³⁷⁸

Home School Agreements

226. Most schools in England and Wales are currently required to adopt a home school agreement (HSA) which is a statement that sets out the school’s aims and values, the expectations of its pupils and the responsibilities of the school and parents with regard to their child’s education.³⁷⁹ The draft Bill removes the requirement for schools in England only. The Government have said that the provision will reduce an unnecessary burden on schools and that it had been welcomed by schools. It is for this reason that there was no specific consultation.³⁸⁰

227. The evidence we heard on this provision was generally supportive. ASCL, Voice and the LGA welcomed it, while the NGA noted that HSAs are often little more than a “tick-box exercise”.³⁸¹ While not suggesting that HSAs were a perfect answer to managing the relationship between parents and schools, NASUWT warned that the change could “send out the wrong signal”.³⁸²

Clause 35

228. We heard evidence of a number of concerns about clause 35, the repeal of the Senior President of Tribunals’ duty to report on standards. The clause removes the duty to report each year to the Secretary of State on the standards of decision-making by the Secretary of

375 Written evidence from the Cabinet Office, p18.

376 Q 216 [Chris Keates]

377 Q 218

378 QQ 219 and 220

379 Explanatory Notes, p 80.

380 Written evidence from the Cabinet Office, p 14.

381 Q 223

382 Q 221

State based on cases which are appealed to the First-tier Tribunal. Much of the work of the First-tier Tribunal system relates to Employment and Support Allowance and Disability Living Allowance which are being replaced by Universal Credit and Personal Independence Allowance under the Welfare Reform Act 2012. There has only been informal consultation on this clause.

229. The Government have said that the report is unnecessary as there are alternative methods for providing feedback. It was also suggested that the report was expensive to produce.³⁸³

230. Concerns were raised about the timing of the repeal, coming at a time of significant changes to the benefits system and an increase in the number of appeals. The Commons Justice Committee pointed out that the clause comes “against a background of disapprobatory reports published by the Senior President of Tribunals on the standards achieved by the [Department for Work and Pensions] and Atos”, with almost half of all appeals brought to court being successful.³⁸⁴ Witnesses felt that the transparency and accessibility of the current system and the fact that it offered an acceptable route for the judiciary to comment were arguments to retain the duty to report.³⁸⁵

Clause 40

231. Clause 40 concerns the removal of powers under the Immigration and Asylum Act 1999 to provide accommodation to persons subject to immigration control who have been temporarily admitted to the UK and to persons released from immigration detention on temporary admission. The Government have said in the Explanatory Notes that the “powers were intended as a means of requiring asylum seekers to reside in accommodation centres whilst their asylum claims were being considered. The initiative was not implemented”.³⁸⁶ However, we were told by witnesses that the power was not moribund and is currently in use.³⁸⁷

232. As mentioned previously in this chapter, clause 40 raised concerns in relation to human rights.³⁸⁸ In the view of the ILPA, the removal of the power engages three articles of the European Convention on Human Rights (ECHR): the right to life; the right not to be subject to inhuman and degrading treatment; and the right to liberty.³⁸⁹ The ILPA explained that the Home Office does not use the powers unless Articles 2 and 3 of the ECHR are engaged, that is only in “the most extreme cases” where no one is going to

383 Commons written answer, 18 October 2013.

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131018/text/131018w0001.htm#13101842000084>

384 Written evidence from the Commons Justice Committee.

385 Q 305 and written evidence from the Family Carer Support Service and NAT.

386 Explanatory Notes, p 161, para 168.

387 Written evidence from Detention Action, para 2, Refugee Action and Asylum Support Appeals Project.

388 Raised in written evidence from Refugee Action, ILPA, Detention Action, para 8, and Asylum Support Appeals Project.

389 Q 314

support an individual.³⁹⁰ They estimated that this amounted to less than 100 over a period of years but commented that without this power people may end up homeless.³⁹¹

233. It was suggested that with the repeal of the power, in many cases the burden of housing individuals will move from central government to local government and the devolved administrations.³⁹² **We did not receive evidence on this clause from these groups, but would encourage the Government to bring the matter to their attention and seek their views when conducting the consultation which we have recommended in paragraph 170 above.**

Clause 47

234. Clause 47 repeals the provision in the Local Government Act 1999 which was intended to strengthen an existing duty on local authorities to consult local representatives. The clause also introduces Schedule 15 which removes a number of statutory requirements on the Secretary of State or other public authorities to consult. An informal consultation was held by the Government on this clause.

235. We heard from Councillor David Simmonds, of the LGA, that this clause was welcomed as it would “bring an end to some of the tick-box culture that has been enforced on local authorities, where there is a need to demonstrate consultation, consultation and consultation again”.³⁹³ He told us that he did not think anything would be lost by the repeal, other than the “likelihood of challenge”.³⁹⁴ Hammersmith and Fulham Council were generally supportive of the removal of the duty to consult and involve.³⁹⁵ There was also support from the Chief Fire Officers Association for the provision in relation to schemes for combining fire and rescue authorities, suggesting that it removes “an unnecessary regulatory burden”.³⁹⁶

236. Friends of the Earth described consultation as “a core element of a democratic government and one of the main ways that Government can be held to account for their actions”.³⁹⁷ They told us the Government’s justifications for the removal of consultation requirements were “neither satisfactory nor sufficient”.³⁹⁸ The most pressing concern we heard in relation to this clause was the risk of conflict with the Aarhus Convention,³⁹⁹ which stems from Principle 10 of the Rio Declaration. We heard from Essex County Council that the removal of the consultation requirement may mean that the UK falls foul

390 QQ313 and 314

391 Q 315

392 Written evidence from Refugee Action, para 7, and Q 314

393 Q 396

394 QQ397 and 398

395 Written evidence from the London Borough of Hammersmith and Fulham, para 2.6.

396 Written evidence from Bedfordshire Fire and Rescue Service/Chief Fire Officers Association.

397 Written evidence from Friends of the Earth, para 12.

398 Written evidence from Friends of the Earth, para 12.

399 Written evidence from Friends of the Earth, Essex County Council and UK Environmental Law Association. The Aarhus Convention establishes the right, under European law, for the public to participate in environmental decision-making, including a requirement for arrangements to be made by public authorities to enable the public to comment on environmental decision making.

of its international obligations.⁴⁰⁰ Friends of the Earth thought that it should be made clear how the obligations in relation to the Aarhus Convention would be discharged.⁴⁰¹

Conclusion on the wider concerns

237. We have no doubt that Parliament will wish to be assured that the Government have taken full account of the possible consequences of these provisions if they decide to take them forward into the Bill.

400 Q 269

401 Written evidence from Friends of the Earth, para 14.

Conclusions and recommendations

Introduction and Background

Procedure of the Committee

1. We take the view that, whilst the 12 week timetable may be regarded as a minimum starting point, a longer deadline should be agreed if, on a case by case basis, it is judged necessary in order to allow a committee to carry out its pre-legislative functions effectively. A deadline longer than the minimum would have been appropriate with regard to the draft Deregulation Bill given the range of issues covered by the draft Bill and the number of Government departments involved. (Paragraph 7)
2. Given that it is the Government's intention that this should be a carry-over Bill and that, according to Mr Letwin, there is "plenty of time" to carry out further consultation if recommended by the Joint Committee, we question why a longer pre-legislative scrutiny inquiry period was not agreed. (Paragraph 8)
3. We sought assurance from the Government that the correct procedures (as set out, for example, in the Sewel Agreement in the case of Scotland), in terms of liaising with the devolved administrations and agreeing Legislative Consent Motions where needed, were being followed. We were assured that they were. (Paragraph 14)

Order-Making Power and other provisions relating to Parliament

The Power is too wide?

4. The order-making power in clauses 51 to 57 of the draft Bill, as currently drafted, is too wide and the safeguards are inadequate. (Paragraph 33)

An appropriate Parliament scrutiny procedure

5. Even if some sort of order-making power along the lines suggested were acceptable, the proposed Parliamentary scrutiny procedure does not offer an appropriate safeguard and it is extremely disappointing that it would add yet another variant to the existing complex raft of strengthened scrutiny procedures. (Paragraph 42)

Primary Legislation

6. The Law Commissions are under a duty to review legislation in order to identify laws which are "no longer of practical utility". The proposed order-making power is intended to offer a mechanism for repealing legislation "no longer of practical use". It appears to us that, in principle, the order-making power duplicates the function of the Law Commissions, although we acknowledge that the Government have raised legitimate concerns about the delays in producing Law Commission SLR Bills and the need for more efficient processes. (Paragraph 53)

7. The Law Commissions' proposals for improvement with regard to producing more frequent and more responsive SLR Bills appear to us to answer the Government's reasons justifying the proposed order-making power, namely to allow departments to follow their own timeframes and to repeal legislation in areas of particular concern to them. We query, however, how this can be achieved given the current size of the Law Commissions' SLR teams. In principle, we think consideration should be given to an annual SLR Bill. (Paragraph 58)
8. The skills, research and consultation needed to ensure that Parliament, external organisations and the public can be satisfied that a piece of legislation is genuinely obsolete strongly suggest that the Law Commissions are better placed to conduct that work than Government departments. Added to which, the independence of the Law Commissions from Government and their track record since 1965 reinforce the trust that Parliament places in the Law Commissions; and it is that trust which has enabled Parliament to fast-track non-controversial Law Commission Bills including SLR Bills. However, we believe that there is merit in the Government and the Law Commissions looking at ways to increase the through-put of the Law Commissions. We would expect, at the very least, that consideration will be given to increasing the number of lawyers deployed by the Law Commissions on SLR work. (Paragraph 65)
9. It is, therefore, unclear why the order-making power should extend to secondary legislation. (Paragraph 66)

Conclusion with regard to the order-making power

10. We therefore recommend that clauses 51 to 57 be removed from the draft Bill. Whilst we do not recommend the removal of Schedule 16, we recommend that the provisions in the Schedule be referred to the Law Commissions for confirmation, before the Committee stage of the Bill in the first House, that they are "no longer of practical use". (Paragraph 67)

Can the order-making power be redeemed?

11. We recommend however that, if the Houses were in favour of some sort of new order-making power, then it should be by way of amendment to the 2006 Act rather than an entirely new power. The amendment could be either to introduce a new test of "no longer of practical use" or to re-define the concept of "burden" so that it includes the burden of outdated and redundant legislation on the statute book. (Paragraph 73)
12. If the new order-making power were to be introduced by way of amendment to the 2006 Act, we recommend that section 15 of the 2006 Act should apply so that Parliament would have the opportunity to require an upgrading of the negative procedure to either affirmative or super-affirmative procedure. We further recommend that any new order-making power under the 2006 Act should fall within the orders of reference of the Regulatory Reform Committee in the Commons and the Delegated Powers and Regulatory Reform Committee in the Lords. (Paragraph 74)

13. If the new order-making power were to be introduced by way of amendment to the 2006 Act, we recommend that limitations on the scope of the power should be set out on the face of the Bill. (Paragraph 75)
14. The consultation provisions under the 2006 Act provide better safeguards and we recommend that they should be applied to any new order-making power. (Paragraph 76)

Other provisions in the draft Bill which has effect of reducing Parliamentary scrutiny

15. We accept the advice of the DPRRC that clause 7 gives rise to a point of principle about the unacceptability of ingredients of a criminal offence being outside Parliamentary scrutiny. We recommend that clause 7, in its present form, be removed from the draft Bill. (Paragraph 79)
16. Whilst we do not object to the general provision introducing ambulatory references into the 1995 Act, we note the advice of the Commons Transport Committee about the scope of the power and also of the DPRRC to the effect that the Secretary of State's power to authorise directions in the proposed new section 306A(5) to (8) is too broad and an inappropriate delegation of legislative power. We recommend that these subsections should be amended so as to include a level of Parliamentary scrutiny. (Paragraph 84)
17. We agree with the DPRRC and recommend accordingly that the delegations of legislative power conferred by provisions inserted by clause 43(2) and (3) of the draft Bill and by Schedule 8, Part 6, to the draft Bill should be exercised by way of statutory instrument, subject to the negative procedure. (Paragraph 85)

Economic Growth Duty

The desirability of a statutory growth duty

18. We conclude that an economic growth duty on regulators is welcome provided that safeguards are in place to ensure that the growth duty does not take precedence over regulation and that the overriding and principal objective of regulators remains the protection of the public interest. We welcome the Minister's assurance on these points; that the duty will not "take precedence over the main reason for their existence ... [or] impinge on the confidence that the public have in the way they exercise their regulatory function". (Paragraph 104)
19. Furthermore, we recommend that any powers given to Ministers to issue guidance, under clause 60(2)(b) of the draft Bill, on how the economic growth duty should be performed must not compromise the independence of regulators. The Government should consider making this clear on the face of the Bill. (Paragraph 105)

Deregulatory extent of duty

20. We are not clear that this measure is, in itself, necessarily deregulatory but if it is applied thoughtfully by regulators, it could lead to less burdensome regulation for some business in the future. (Paragraph 110)

Regulators in scope

21. Given the evidence we have received, we recommend that the Government review with some care the list of organisations to which the growth duty is intended to apply and consult fully with the organisations proposed. There is a risk that there may be, for some regulators, disproportionate and unintended consequences of the duty which need to be identified before the duty is introduced. We note the inclusion of the Equality and Human Rights Commission and the risks that its inclusion may present to its international standing. (Paragraph 116)

Sustainable Growth

22. We welcome the Government's reasons for proposing a duty on regulators to have regard in broad terms to "economic growth". (Paragraph 119)

Measurement of the effect of the duty

23. We recommend that the Government consider by what criteria the impact of the duty could be demonstrated. We welcome the Minister's commitment to reflect further on the matter. (Paragraph 123)

Use of Land Provisions

Importance of the 'package' remaining as a whole

24. We are aware that the law governing rights of way is highly contentious and commend the SWG for its achievement in reaching a consensus on the issue of recording unrecorded historic rights of way. We acknowledge also that maintaining that consensus requires the package of reforms contained in the draft Bill to be accepted as a whole. (Paragraph 130)

Provisions in the draft Bill

25. Whilst the SWG has managed to forge a consensus in support of the package, aspects of the new provisions are still under discussion both within the SWG and more widely. We expect the Government to show leadership and balance to take this vital part of our Report to a successful conclusion. (Paragraph 139)

Cost and backlog

26. We have some concerns about the current backlog of rights of way applications and the likely additional pressures caused by the reforms and the imposition of the cut-off date. We question whether the implications for local authorities, in particular,

have been fully assessed by the Government. Against this background, if these clauses are to go forward in this Bill, the Government will need to address the impact on local authorities. (Paragraph 145)

Root and branch reform

27. We took the view at the outset that we would focus our attention on the clauses in the draft Bill and that we would not consider proposals for additional provisions. Given the level of public interest in rights of way, however, we drawn to the attention of the Government the wider rights of way concerns raised in the course of this inquiry and urge them to take action to meet them. (Paragraph 154)

Other Provisions

Adequacy of the consultation on specific clauses

28. While we very much welcome the opportunity to carry out pre-legislative scrutiny on the draft Bill, we are clear that our scrutiny is not part of the consultation process that should be carried out by Government. Government should not rely on Parliament to consult on their behalf. However, they should take note of the evidence we received. (Paragraph 168)
29. However, we conclude that the consultation carried out by the Government for a number of provisions in this Bill is inadequate. We are unable to comment on the adequacy of the consultation for clauses we did not examine in depth but we would encourage the Government to review critically the extent of its consultation on all clauses before the Bill is introduced to Parliament. (Paragraph 169)
30. We were pleased to note the Minister's commitment to consult further on clauses that we identified needed fuller consultation. We recommend that further consultation is carried out on clauses 9, 28 and 40. (Paragraph 170)

Conclusion on deregulatory extent

31. In our view, for some of the provisions in the draft Bill—such as decriminalisation of household waste (clause 29)—the balance may well have resulted in an overall increase in burdens with a greater burden being placed on one party than is lifted from another. (Paragraph 188)
32. We recommend that, before the Deregulation Bill is introduced into Parliament, the Government should ensure that the overall effect of each and every provision in the Bill is demonstrably deregulatory so that the Houses may be satisfied that each is within scope of the Bill. (Paragraph 189)

Wider concerns

33. In paragraph 170 above, we have recommended that clause 9 should be the subject of further consultation. We encourage the Government to ensure that all relevant stakeholders are given an opportunity to air their views. (Paragraph 214)

34. We recommend in paragraph 170 that the Government undertake further consultation on this provision. Furthermore, we recommend, in the light of responses to that consultation, that the Government consider whether the clause is in scope of the Bill and whether the delegation is fully justified. (Paragraph 217)
35. We did not receive evidence on this clause from these groups, but would encourage the Government to bring the matter to their attention and seek their views when conducting the consultation which we have recommended in paragraph 170 above. (Paragraph 233)

Conclusions and the wider concerns

36. We have no doubt that Parliament will wish to be assured that the Government have taken full account of the possible consequences of these provisions if they decide to take them forward into the Bill. (Paragraph 237)

Appendix 1: Members and Interests

The Members of the Joint Committee that conducted this inquiry were:

Baroness Andrews (Labour)
Lord Mawson (Crossbench)
Lord Nasbey (Conservative)
Lord Rooker (Chairman) (Labour)
Lord Selkirk of Douglas (Conservative)
Lord Sharkey (Liberal Democrat)

Andrew Bridgen MP (Conservative)
James Duddridge MP (Conservative)
John Hemming MP (Liberal Democrat)
Kelvin Hopkins MP (Labour)
Ian Lavery MP (Labour)
Priti Patel MP (Conservative)

Declaration of Interests

The following interests have been declared:

Baroness Andrews: Former Chair of English Heritage. Member of the Delegated Powers and Regulatory Reform Committee

Lord Nasbey: Former Chairman of 'The Children's Mutual' retired 31.12.2005 (Leading provider of Child Trust Funds)

Lord Sharkey: Governor of the Institute for Government. Trustee of the Hansard Society

Lord Rooker: Former Chair of the Food Standards Agency

Andrew Bridgen MP: Member and former regional chairman of the Institute of Directors

John Hemming MP: A landowner

Full List of Members' interests are recorded in the Commons Register of Members' Interests:

<http://www.publications.parliament.uk/pa/cm/cmregmem/contents1314.htm>

And the Lords Register of Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Appendix 2: Call for written evidence

The draft Deregulation Bill contains a broad range of measures which are intended to reduce the burden of regulation on business, civil society, other organisations (including public sector bodies) and individuals.

Many of the provisions of the draft Bill are concerned with specific areas of activity such as health and safety, rights of way, reduction in the qualifying period for the right to buy council housing, household waste, education and the administration of justice. There may be consequent implications for employment law, company law, insolvency law, human rights, the environment and community wellbeing. Some of the measures may have an impact in the devolved areas.

The draft Bill also includes a general provision for the repeal or revocation of legislation which a Minister considers to be “no longer of practical use”,

In addition, the draft Bill introduces a duty on persons exercising certain regulatory functions to “have regard” to the desirability of “promoting economic growth”. The draft Bill gives a Minister the power to specify the regulatory functions of particular bodies to which the new duty would apply and to issue guidance on related matters including on the meaning of “economic growth”.

The Joint Committee on the draft Deregulation Bill, chaired by Lord Rooker, was appointed by both Houses of Parliament on 17 July 2013 to conduct pre-legislative scrutiny into the draft Deregulation Bill and the policies underpinning it. The Joint Committee comprises six MPs and six Peers. It will take written and oral evidence and make recommendations in a report to both Houses. The Joint Committee is required to make its report by 16 December 2013.

The Joint Committee invites interested organisations and individuals to submit written evidence as part of the inquiry. Below are some questions about the draft Bill. The Joint Committee would appreciate written submissions on any of these questions on which you have evidence to contribute, or on any other matters relevant to the draft Bill. It is not necessary to address every question. The deadline for submissions is **Monday 16 September**.

This first Call for Evidence focuses principally on the generic provision and general questions about the draft Bill. This is an open Call for Evidence on any issues about the draft Bill you wish to raise. Questions are provided below on the issues the Committee has initially identified as interesting but further, more specific, Calls for Evidence may be published later as other lines of enquiry emerge. Updates will be published on our webpage: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-deregulation-bill/>

Questions

General

1. The draft Bill covers a broad range of specific activities and a large amount of legislative provision is amended by it. Could the same result have been achieved using existing secondary legislative procedures?
2. What are the advantages and disadvantages of including specific deregulatory provisions amending existing legislation and providing additional or amended order making powers within primary legislation rather than considering them through existing deregulatory mechanisms?
3. Are the changes proposed in the draft Bill evidence-based and have any risks associated with the changes been taken adequately into account?
4. Does the draft Bill achieve its purpose of reducing the regulatory burden on business, organisations and individuals effectively and fairly?
5. Will the draft Bill generally benefit businesses by offsetting other regulatory burdens? Are there indirect impacts on other businesses from reducing regulation in specific sectors?
6. To what extent does the draft Bill benefit consumers as well as businesses?
7. How does the provision in the draft Bill affect:
 - i. protections afforded to individuals under human rights and equalities legislation?
 - ii. employment law, skills and the labour market?
 - iii. the environment, particularly in the management of waste?
 - iv. the provision of education?
 - v. the effective administration of justice?
 - vi. social, wellbeing or health inequalities?
8. Have the measures set out in the draft Bill been subject to adequate cost-benefit analysis on the basis of consultation with those affected?
9. Will any or all of the proposals have any significant economic or financial impact? Do you have any evidence of the impact that will aid the Committee in their scrutiny?

Power to disapply legislation no longer of practical use

10. Is a new “power to disapply legislation no longer of practical use” necessary or are there existing procedures which could be used to achieve the same effect?” (Clause 51)?
11. Is the meaning of the phrase “no longer of practical use” clear? In this context, what is meant by “practical”? Should it be defined and, if so, how? Will removing any of the provision proposed in Schedule 16 of the draft Bill have implications for any other areas of regulation?

12. Are the safeguards regarding the use of the “no longer of practical use” power (set out in Clauses 54 to 56) adequate and appropriate?
13. Other deregulatory mechanisms such as Legislative Reform Orders or Public Bodies Orders have specific tests set out in the parent Act - should there be similar tests set out in the draft Bill? What should they be?
14. Are the mechanisms set out for parliamentary oversight (Clauses 55 and 56) of deregulation orders adequate and appropriate?
15. Are there other changes to deregulatory powers, procedures and parliamentary oversight which you think should have been included in the Bill and, if so, why?
16. What are the risks associated with the proposed new power to disapply legislation that is “no longer of practical use”?

A duty to have regard to the desirability of promoting economic growth

17. To what extent do the Government’s existing powers of direction over regulators already provide the ability to guide regulators towards the importance of promoting economic growth? Is this legislation necessary?
18. Will the introduction of a duty to have regard to “promoting economic growth” compromise the independence of regulators? What additional safeguards are required to ensure that the introduction of such a duty will not compromise the independence of a regulator?
19. How is a duty to have regard to the desirability of economic growth likely to affect those regulators to which it is applied?
20. Where is the introduction of such a duty likely to have beneficial effect? Where might there be adverse consequences?
21. How might the extent to which a regulator has fulfilled, or breached, the duty be ascertained?
22. How can the likely financial and economic impact of the proposed duty be assessed?

Devolution

23. What are the consequences of the draft Bill for the devolved administrations?

Appendix 3: Witnesses

Wednesday 16 October 2013

Dr Will Cavendish, Executive Director, Implementation Group, **Charlotte Spencer**, Deputy Director, Red Tape Challenge, Implementation Group, **David Howarth**, Bill Manager, Draft Deregulation Bill, Cabinet Office, **Graham Turnock**, Chief Executive, Better Regulation Executive, and **Graham Russell**, Director, Better Regulation Delivery Office, Department for Business Innovation and Skills

The Rt Hon Lord Justice Lloyd Jones, Chairman, and **Elaine Lorimer**, Chief Executive, Law Commission, and **Malcolm McMillan**, Chief Executive, Scottish Law Commission

Monday 21 October 2013

Wendy Hewitt, Acting Legal Director, and **Ian Acheson**, Chief Operating Officer, Equality and Human Rights Commission, **Sarah Veale**, Head of Equality and Employment Rights Department, TUC, **Mike Spicer**, Head of Research, British Chambers of Commerce, and **Jenny Williams**, Chief Executive, and **Matthew Hill**, Director of Strategy, Research and Analysis, Gambling Commission

Graeme Fisher, Head of Policy, Federation of Small Businesses, **Richard Jones**, Head of Policy and Public Affairs, Institution of Occupational Safety and Health, **Gay Moon**, Special Legal Adviser, Equality and Diversity Forum, and **Michael Harlow**, Governance and Legal Director, English Heritage

Wednesday 23 October 2013

Ian Bauckham, ASCL President and Headteacher, Bennett Memorial School, Kent, Association of School and College Leaders, **Stewart Segal**, Chief Executive, Association of Employment and Learning Providers, **Gillian Allcroft**, Policy Manager, The National Governors' Association, and **Chris Keates**, General Secretary, NASUWT

Angus Evers, Partner (Planning & Environment Group), UK Environmental Law Association, **Professor Terence Daintith**, Professorial Fellow at the Institute of Advanced Legal Studies, University of London, **Robert Overall**, Deputy Chief Executive and Executive Director for Place Commissioning, Essex County Council, and **Jake White**, Friends of the Earth

Monday 28 October 2013

Ray Anderson, Natural England Stakeholder Working Group, **Kate Ashbrook**, The Ramblers, **Sarah Slade**, Country Land & Business Association, and **Rosalinde Emrys-Roberts**, Hertfordshire County Council

Wednesday 30 October 2013

Alison Harvey, Legal Director, Immigration Law Practitioners Association, **Stephen Cottle**, Barrister, Garden Court Chambers, and **Sarfraz Khan**, Senior Lawyer, Equality and Human Rights Commission

Mark Froud, Managing Director, Federation for Industry Skills and Standards, **Andrew Tate**, Chair, Small Practices Group on behalf of R3, **Alexander Ehmman**, Head of

Regulatory and Parliamentary Affairs, Institute of Directors, and **Alexander Jackman**, Head of Policy, Forum of Private Business

Monday 4 November 2013

Councillor David Simmonds, Chair, Local Government Association Children and Young People Board and Deputy Leader, London Borough of Hillingdon, and **Paul Raynes**, Head of Programmes, Local Government Association, and **Catherine Ryder**, Policy Leader, National Housing Federation

Richard Connaughton, and **Marlene Masters**, Alternative Stakeholders Working Group, **Patricia Stubbs**, Peak District Green Lanes Alliance, and **Andrew Brown**, Motoring Organisations' Land Access & Recreation Association, LARA Steering Committee

Michael P Clancy OBE, Director, Law Reform, Law Society Scotland, and **Ruth Fox**, Director and Head of Research, Hansard Society

Wednesday 6 November 2013

Lord Norton of Louth, House of Lords

Rt Hon Michael Fallon MP, Minister of State for Business and Energy, Department for Business Innovation and Skills and Minister of State for Energy, Department of Energy and Climate Change

Rt Hon Kenneth Clarke QC MP, Minister without Portfolio, Cabinet Office, and **Rt Hon Oliver Letwin MP**, Minister for Government Policy, Cabinet Office

Appendix 4: Written evidence

- 1 4Children
- 2 4 Parishes BOATs Joint Committee
- 3 Action with Communities in Rural England
- 4 Advisory Council for Education of Romany and other Travellers
- 5 Alan Nuttall
- 6 Aldingbourne Trust
- 7 Alison Sharman
- 8 All Party Parliamentary Group. Gypsies, Travellers and Roma
- 9 Allen & Overy
- 10 Alternative Stakeholders Working Group
- 11 Andrew Hall
- 12 Anne Buckley
- 13 Arco
- 14 Arctic Methane Emergency Group
- 15 Ashover Parish Council
- 16 Association of British Bookmakers
- 17 Association of British Insurers
- 18 Association of Colleges
- 19 Association of Colleges, supplementary evidence
- 20 Association of Convenience Stores
- 21 Association of Directors of Environment, Economy, Planning and Transport
- 22 Association of Employment and Learning Providers
- 23 Association of Personal Injury Lawyers
- 24 Association of Professional Financial Advisers
- 25 Association of School and College Leaders
- 26 Association of Teachers and Lecturers
- 27 Asylum Support Appeals Projects
- 28 Baroness Jay of Paddington
- 29 Bedfordshire Association of Town & Parish Councils
- 30 Bernard Hewood
- 31 Big Brother Watch
- 32 Bradford HF Walking and Social Club
- 33 Bradwell Parish Council
- 34 Brian Gilbert
- 35 Brian Kingham
- 36 British Air Transport Association
- 37 British Association for Leisure Parks
- 38 British Chambers of Commerce
- 39 British Horse Society
- 40 Broadcasting Entertainment and Cinematograph and Theatre Union
- 41 Broads Authority and Broads Local Access Forum
- 42 Buriton Parish Council

- 43 Cabinet Office, Impact Assessments
- 44 Cabinet Office, Delegated Powers Memorandum
- 45 Cabinet Office, Information on regulators in scope of clauses 58–61 of Draft Deregulation Bill
- 46 Cabinet Office, Duty to have regard to growth: Information on practical ways in which growth duty (clauses 58–61 of draft Deregulation Bill) can affect regulators' decisions
- 47 Cabinet Office, supplementary evidence
- 48 Cabinet Office, Ministerial Involvement
- 49 Cabinet Office, Paper on Devolution
- 50 Cabinet Office, Policy Briefing Document
- 51 Cabinet Office, Type of consultation taken for measures contained within Draft Deregulation Bill
- 52 Cambridgeshire County Council
- 53 Campaign to Protect Rural England
- 54 Catherine Law and Bevis Hughes
- 55 Catholic Education Service
- 56 Cathy Fewlass
- 57 Catriona Cook MBE
- 58 CBI
- 59 Celia Tinker
- 60 Centre for Housing Policy
- 61 Centro
- 62 Chelmorton Parish Council
- 63 Chief Fire Officers Association and Bedfordshire Fire and Rescue Service
- 64 Chris Truman Davies
- 65 Christopher Ellison
- 66 Cinema Exhibitors' Association
- 67 City and Guilds
- 68 Community Law Partnership
- 69 Compulsory Purchase Association
- 70 Councillor Gary Purdy
- 71 Councillor Graham Baxter MBE
- 72 Country Land and Business Association
- 73 Country Land and Business Association, supplementary evidence
- 74 Craven Naturalists and Scientific Association
- 75 David Bancroft
- 76 David Clough
- 77 David Leng
- 78 David Peck
- 79 David Selkirk
- 80 Denise Hawks
- 81 Detention Action
- 82 Devon County Council
- 83 Diana Mallinson
- 84 Diane Tranter

- 85 Direct Line Group
- 86 Discrimination Law Association
- 87 Dorset Wildlife Trust
- 88 Dr A M Hilton
- 89 Dr Amanda J Meikle
- 90 Dr D C Turner and Dr Beryl Turner
- 91 Dr D R Langslow and Mrs H K Langslow
- 92 Dr J C Bridger
- 93 Dr P D Wadey
- 94 Elizabeth Downing
- 95 Elizabeth Kirk
- 96 Energy Saving Trust
- 97 English Heritage
- 98 Equal Rights Trust
- 99 Equality and Diversity Forum
- 100 Equality and Human Rights Commission
- 101 Equality, Diversity & Human Rights National Policing Area
- 102 Essex Bridleways Association
- 103 Essex County Council
- 104 Evelyn Aris-Fowkes
- 105 Family Carer Support Service
- 106 Federation for Industry Sector Skills and Standards
- 107 Federation of Small Businesses
- 108 Federation of Small Businesses, supplementary evidence
- 109 Forum of Private Businesses
- 110 Frank Gordon
- 111 Friends of the Earth
- 112 Friends of Ridgeway
- 113 Friends, Families and Travellers
- 114 G P Cooper
- 115 Gambling Commission
- 116 Garden Court Chambers Civil Team
- 117 Gary Aldridge
- 118 Geoff Dawson
- 119 Geoff Eyre
- 120 Geoffrey and Julia Queen
- 121 Glynne Powell
- 122 Green Lanes Association Ltd
- 123 Green Lanes Environmental Action Movement GLEAM
- 124 Green Lanes Protection Group
- 125 Green Lanes Protection Group, supplementary evidence
- 126 Green Lanes Protection Group, supplementary evidence
- 127 Hammersmith & Fulham Council
- 128 House of Commons Education Committee
- 129 House of Commons Justice Committee

- 130 House of Commons Speaker's Committee on Electoral Commission
- 131 House of Commons Transport Committee
- 132 House of Lords Communications Committee
- 133 House of Lords Delegated Powers and Regulatory Reform Committee
- 134 Ian Selby
- 135 ICAEW
- 136 Immigration Law Practitioners' Association
- 137 Inclusion London
- 138 Insolvency Lawyers' Association
- 139 Insolvency Service
- 140 Institute for Learning
- 141 Institute of Chartered Accountants in Ireland
- 142 Institute of Chartered Accountants of Scotland
- 143 Institute of Employment Rights
- 144 Institute of Ergonomics and Human Factors
- 145 Institute of Public Rights of Way
- 146 Institution of Occupational Safety and Health
- 147 Irish Traveller Movement in Britain
- 148 Jacob and Pat Jowett
- 149 Jane Lacey
- 150 Jennifer Wedgwood
- 151 John Copperthwaite
- 152 John Cotsell
- 153 John E Warren
- 154 John Harrison
- 155 John Keith Newrick
- 156 John Ross
- 157 John Thorp
- 158 John Trevelyan
- 159 Joint Committee on Human Rights
- 160 Joyce Poulter
- 161 Judith Davey
- 162 June Smith
- 163 K A Stoney
- 164 Karl Lunt
- 165 Kay Allinson
- 166 Kiki Angelrath
- 167 Law Commission
- 168 Law Commission, supplementary evidence
- 169 Law Society of Scotland
- 170 Legal Services Board
- 171 Leonard Pope
- 172 Linda Lee
- 173 Local Government Association
- 174 Lord Norton of Louth

- 175 M Holyoake
- 176 Malcolm Lampard
- 177 Mark A Willingham
- 178 Mark Brown
- 179 Matthew and Marian Simpson
- 180 Maureen Comber
- 181 Mayor of London
- 182 ME Association
- 183 Mendip Bridleways & Byways Association
- 184 Miss M Walker
- 185 Motoring Organisations' Land Access and Recreation Association
- 186 Mr Andrew Hall
- 187 N Moore
- 188 Naomi Houlclushew
- 189 Napp Pharmaceuticals
- 190 NASUWT
- 191 National Aids Trust
- 192 National Assembly for Wales
- 193 National Association of Local Councils
- 194 National Farmers Union
- 195 National Federation of Gypsy Liaison Groups
- 196 National Governors' Association
- 197 National Housing Federation
- 198 National Institute of Adult Continuing Education
- 199 National Parks England
- 200 National Union of Journalists
- 201 Natural England Stakeholder Group
- 202 Nautilus International
- 203 Network Rail
- 204 Newspaper Society
- 205 Nidderdale Society
- 206 Norfolk Wildlife Trust
- 207 Norfolk Wildlife Trust, supplementary evidence
- 208 North Craven Heritage Trust
- 209 North East Chamber of Commerce
- 210 North Yorkshire Fell Club
- 211 North Yorkshire Moors Association
- 212 Northumberland County Council
- 213 Northumbria Area Ramblers
- 214 OCR
- 215 Officer of Solicitor to Scottish Parliament Joint Committee
- 216 Oil and Gas UK
- 217 Open Country
- 218 Open Spaces Society
- 219 Optical Federation

- 220 Outseats Parish Council
- 221 P Chadwick
- 222 P Negal
- 223 Pam Harris
- 224 Patricia A Whelan
- 225 Patricia Stubbs
- 226 Paul A Dowling
- 227 Peak and Northern Footpaths Society
- 228 Peak District Green Lanes Alliance
- 229 Peak District Green Lanes Alliance, supplementary evidence
- 230 Peak Horsepower
- 231 Pennine Way Association
- 232 Pennine Way Association, supplementary evidence
- 233 Peter and Janet Young
- 234 Peter Simon
- 235 Polly Blacker
- 236 Professor Audley Genus, Kingston University
- 237 Professor Jenny McEwan, Exeter University
- 238 Professor N J Soper and Dr A M Soper
- 239 Professor Terence Daintith, University of London
- 240 Public and Commercial Services
- 241 R N Lawton
- 242 R3—Insolvency Trade Body
- 243 Rail North
- 244 Ramblers
- 245 Refugee Action
- 246 Refugee Action, supplementary evidence
- 247 Regulatory Reform Committee
- 248 Rhona Thornton
- 249 Richard Gilbert
- 250 RMT
- 251 Road Safety GB
- 252 Robert Bramham
- 253 Robert Kelly
- 254 Rocking the Boat
- 255 Rosalinde Emrys-Roberts
- 256 Rosemary and Rodrigo Gomez
- 257 Royal Society for Prevention of Accidents
- 258 RSPB
- 259 Rt Hon Kenneth Clarke MP
- 260 Rt Hon Kenneth Clarke MP, supplementary evidence
- 261 Rupert Barnes
- 262 Sally Green
- 263 Sarah Amstrong
- 264 Sarah Simmonds

- 265 Scottish Law Commission
- 266 Sean Barnett
- 267 Security Industry Authority
- 268 Share Foundation
- 269 Sheila Foster, Arncliffe Parish
- 270 Simon Cramp
- 271 Slaughter & May
- 272 Society of Editors
- 273 South Pennine Packhorse Trails Trust and National Federation of Bridleway Associations
- 274 South Somerset Bridleways Association
- 275 Southampton City Council
- 276 Stephen C Pratt and Patricia Rowe
- 277 Stephen Rickitt
- 278 Stoke-on-Trent City Council
- 279 Stoney Middleton Parish Council
- 280 Susan Henwood
- 281 Susan Morgan
- 282 T W M Eccles
- 283 Tessa Burrington
- 284 Thelma Rowell
- 285 Tim Wade
- 286 Tony Cornah
- 287 Town and Country Planning Association
- 288 Trevor and Josephine Wright
- 289 TUC
- 290 TUC, supplementary evidence
- 291 UK Chamber of Shipping
- 292 UK Environmental Law Association
- 293 UK Environmental Law Association, supplementary evidence
- 294 UNISON
- 295 Unite
- 296 United Kingdom Accreditation Service
- 297 United Kingdom Maritime Pilots' Association
- 298 University and College Union
- 299 Valarie Stockdale
- 300 Valpak Ltd
- 301 Veli Albert Kallio
- 302 Veronica Boulton
- 303 Voice: Union for Education Professionals
- 304 Wendy Neilson
- 305 Wetherby District Footpath Group
- 306 Wildlife and Countryside Link
- 307 Yorkshire Dales Green Lanes Alliance
- 308 Yorkshire Dales National Park Authority

Written and oral evidence is published on the Committee website

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-deregulation-bill/publications>

Appendix 5: Evidence from Parliamentary Committees

House of Lords Delegated Powers and Regulatory Reform Committee, 28 October 2013

Thank you for inviting the Delegated Powers and Regulatory Reform Committee to comment on the delegated powers in the draft Deregulation Bill. We welcome the opportunity. We considered the draft Bill at our meeting yesterday and I have pleasure in attaching a memorandum setting out the Committee's views.

We hope the attached memorandum will be useful as part of your scrutiny of the draft Bill; and we look forward to reading the Joint Committee's Report. We will, of course, look carefully at the delegated powers contained in any subsequent Bill introduced to the House of Lords.

Baroness Thomas of Winchester, Chairman

1. We were invited by the joint committee to consider the provisions in the Draft Deregulation Bill that delegate legislative power. The Cabinet Office has provided a memorandum about the delegated powers in the Draft Bill. Having considered the Draft Bill, we have particular concerns about the delegated powers in the following provisions.

CLAUSE 7: AUTHORISED FUELS AND EXEMPT FIREPLACES

2. Under section 20 of the Clean Air Act 1993 (which creates offences in relation to certain smoke emissions) it is a defence to prove that the emission was caused by an "authorised fuel", defined in subsection (6) as a fuel declared by the Secretary of State in negative regulations to be an authorised fuel. Also, no offence is committed where unauthorised fuel is burnt on a fireplace that is one of a class of fireplaces exempted (conditionally or unconditionally) from section 20 by a negative order under section 21.

3. The new subsection (5B) inserted in section 20 by clause 7(2) would define "authorised fuel", in relation to England, as a fuel included in a list kept (and published) by the Secretary of State. The new subsection (1A) inserted in section 21 by clause 7(3) would similarly enable the Secretary of State to exempt classes of fireplace from section 20 (with or without conditions) by list. The effect of inclusion in either list would also be to preclude the commission of an offence under section 23 (acquiring or selling fuel) in respect of that fuel or its use in such a fireplace.

4. Both of these changes would remove the specification of authorised fuels and exempt fireplaces from the sphere of subordinate legislation laid before Parliament (and accordingly subject to Parliamentary control) into the realms of administrative lists. In the context of the ingredients of a criminal offence and of its associated defence, we regard that as a wholly unsatisfactory proposal.

5. We found the explanations advanced in paragraphs 75-77 of the memorandum very surprising. Apparently, manufacturers find it burdensome that fuels and fireplaces can be authorised or exempted in statutory instruments only once every six months. This is because it is Government policy where possible to limit to twice a year (“the common commencement dates”) the occasions on which subordinate legislation affecting business may come into force. Accordingly, the Government now prefer to dispense with subordinate legislation for the purpose, and to use lists instead.

6. Seemingly, having fashioned its own internal fetter on its powers to make regulations and orders, the Government are now presenting this self-erected obstacle as a ‘burden’ on business, to be relieved, not by modifying their own self-denying ordinance to allow instruments to be made more frequently in this case, but by denying Parliamentary control over the ingredients of a criminal offence (and defence). **We therefore conclude that these delegations of legislative power to documents that elude Parliamentary control are inappropriate.**

CLAUSE 28: MODEL CLAUSES IN PETROLEUM LICENCES

7. Section 3 of the Petroleum Act 1998 enables the Secretary of State to grant licences to persons to bore for, and to get, petroleum in certain circumstances. Section 4 requires him to make negative regulations prescribing a number of matters connected with applications for, and the grant of, licences, including (subsection (1)(e)) model clauses to be incorporated in any such licence.

8. Clause 28(2) would remove the requirement in section 4(1)(e) regarding model clauses and insert instead new subsections (2A) to (2C) which, in effect, afford the Secretary of State the choice of prescribing the model clauses either by negative regulations or in a published document. The most significant feature of the proposal from our perspective would be that the model clauses would not be subject to Parliamentary control. In paragraphs 235-238 of the memorandum, the Government explain that the model clauses themselves are generally not controversial; that amendments made otherwise than by statutory instrument can be effected more quickly and cheaply; that the exercise of consolidating published model clauses will be cheaper and more straightforward; and that regulations will still be used where changes are significant or controversial.

9. While those are undoubtedly relevant factors, we were especially influenced in our assessment of clause 28 by three considerations.

10. It is not unusual for changes to either specific or standard conditions of energy licences to require a Parliamentary procedure: the present Energy Bill provides for several instances where modifications of licence conditions in gas and electricity supply licences are to attract the draft negative procedure.

- It seems apparent from new subsection (2C) that a document may amend regulations, and *vice versa*, although the reference to subsection (2A) suggests that only future regulations might be amendable by document. On its face, the notion of a mixture of regulations and documents affecting the same model clauses does not seem particularly user-friendly.

- The subject matter of some of the model clauses presently in force under Statutory Instrument 1999 No.160, does not strike us as being necessarily free from controversy. We have in mind in particular clauses governing ‘the abandonment and plugging of wells’, and about ‘working obligations’ as they relate to such matters as seismic surveys.

11. We therefore remain unpersuaded by paragraphs 227-238 of the memorandum that the changes proposed to the legislative power delegated in section 3 of the 1998 Act are appropriate.

CLAUSE 43 – GANGMASTERS: ENFORCEMENT OFFICERS’ FUNCTIONS

12. Section 15 of the Gangmasters (Licensing) Act 2004 enables the Secretary of State to appoint “enforcement officers”, with the functions set out in subsection (1)(a) and (b) (to enforce the provision prohibiting unlicensed activity and to take action where it appears that an offence under the Act has been committed). Alternatively, or in addition, he may make arrangements with an authority listed in subsection (3) for officers of that authority to be enforcement officers. Clause 43(2) inserts a new subsection (3A) (and clause 43(3) inserts a similar sub-paragraph in the equivalent Northern Ireland provisions).

13. The new subsection enables the Secretary of State to provide that enforcement officers are not to exercise such functions in relation to the institution or conduct of criminal proceedings as may be specified. The memorandum does not mention this provision. Although paragraph 184 of the Explanatory Notes does not make this clear, it seems to us to be implicit that the power is intended to be exercisable generally, and there is nothing in the new subsection (3A) that would appear to preclude this. If that is the case, the power is legislative in character because it can curtail the statutory functions of enforcement officers conferred by section 15(1)(b) of the 2004 Act.

14. New subsection (3A) does not specify how the Secretary of State is to “provide” for the curtailment of officers’ functions, nor how or where the functions in question are to be specified. **We therefore consider that the new powers inserted by subsections (2) and (3) of clause 43 (if intended to be general in scope) should be exercisable by statutory instrument subject to negative procedure.** We also do not think it satisfactory that power should be conferred on the Secretary of State enabling him to remove these statutory functions from enforcement officers without requiring him, rather than merely enabling him, to transfer them elsewhere.

CLAUSE 48: AMBULATORY REFERENCES

15. Clause 48 inserts a new section 306A into the Merchant Shipping Act 1995, enabling subordinate legislation made under that Act to include “ambulatory provision” (see subsections (2) and (4)). This would permit (say) regulations made to implement an international instrument (for instance, a maritime convention) to provide that references in the regulations to the convention are to be construed as references to it as for the time being in force.

16. Such an approach is not novel in principle, because (as is mentioned in paragraph 308 of the memorandum) an equivalent power has already been enacted in relation to

EU instruments in the European Communities Act 1972 (by an amendment made by the Legislative and Regulatory Reform Act 2006). On that occasion, we did not regard the power to make ambulatory provision as inappropriate, but nevertheless drew its significance to the attention of the House.

17. One aspect of the power proposed here is, however, novel, in that subsection (5) enables subordinate legislation that makes ambulatory provision to authorise the Secretary of State to give directions about whether, when and how any particular change to the international instrument is to apply. The power to authorise directions is then elaborated considerably by subsections (6) to (8). Where (for instance) a direction disapplies a particular change in a convention, it may also disapply provisions in the regulations and make alternative provision (see subsection (6)). The directions are not to be given by statutory instrument, and hence no Parliamentary scrutiny procedure would apply to them. But there can be no doubt that the provision made in the directions would be an exercise of legislative power.

18. According to paragraph 311 of the memorandum, this power is needed to enable the Secretary of State to react to changes in international instruments without incurring the delay associated with making provision by statutory instrument. Explanations of this kind are not infrequently offered to us by the Government as a justification for enabling provision to be made without Parliamentary control, and our practice is to approach such reasoning with some scepticism and to require a fairly compelling case to be made before being ready to regard the power as not inappropriate. In the present instance, we have not found the reasons advanced in paragraphs 311-314 particularly persuasive; in particular, we remain unconvinced that the fact that a change to an international instrument may itself have been reported to Parliament (see paragraph 313) necessarily justifies a denial of Parliamentary control over the amendments to be made to domestic law in response to the international change. **Accordingly, we regard the powers in new section 306A(5)-(8) to give directions as an inappropriate delegation of legislative power.**

CLAUSE 49: DATES DESCRIBED IN LEGISLATION

19. Clause 49 makes a free-standing provision that is to be of general application. We saw a similar power, exercisable only in a specific context, earlier this Session when we considered the Offender Rehabilitation Bill. The purpose of the proposed power is well explained in paragraph 207 of the Notes by reference to an example in paragraph 208. The power here differs from that in the earlier Bill, in that subsection (1) includes (in paragraph (b)) a power to amend “the date on which any other event occurs”. The purpose of that additional power is not explained in the Notes or in the Memorandum: it could be intended to be an event connected with commencement, but it need not be.

20. **We welcome the general power now proposed in clause 49(1)(a), as we did the specific version in the Offender Rehabilitation Bill, as a useful mechanism for rendering references in Acts to their commencement dates more accessible to users. However, we consider that the intended purpose of the additional power conferred by subsection (1)(b) requires some further explanation by the Cabinet Office.**

CLAUSE 51: LEGISLATION NO LONGER OF 'PRACTICAL USE'

21. Clause 51 enables a Minister to provide by order for legislation (including provisions of Acts) to cease to apply “if the Minister considers that it is no longer of practical use”. An order could make any of the provision described in subsection (2).

22. The procedure for an order under clause 51 is a “strengthened procedure” that does not fit happily into any of the existing categories we examined in our Special Report (*Strengthened statutory procedures for the scrutiny of delegated powers* – HL Paper 19) last Session. There must be consultation (clause 54), following which the Minister must lay a draft of the order along with an explanatory document (clause 55); but the order can only be made if neither House (or its designated committee) resolves (or recommends), within 40 days of laying, that the order may not be made in terms of the draft (clause 56). So the Parliamentary procedure that is to apply is merely a draft negative procedure, enhanced to the limited extent described above.

23. The test (“no longer of practical use”) that is to apply to the operation of this broad Henry VIII power seems to us to be startlingly wide and vague. Paragraph 323 of the memorandum explains the three categories of circumstances thought “likely” to lead to a conclusion that provisions are no longer of practical use: essentially these appear to us to be where provisions are thought to be spent, or superseded, or redundant. But the “no practical use” test is wider than that, and there is no express provision in clause 51 confining its scope to those three categories, or in any other way whatever.

24. Paragraph 323 of the memorandum also explains that the new power would supplement not only the existing arrangements operated by the Law Commission for the repeal of redundant legislation, but also the powers in Part 1 of the Legislative and Regulatory Reform Act 2006 (that enable primary legislation to be repealed or amended by order for the purpose of removing burdens). Although paragraph 325 explains why it is thought that the Law Commission’s arrangements might require supplementation, nothing is said about the 2006 Act (which enables Parliament to require instead an affirmative or super-affirmative procedure for orders). As respects the final sentence of that paragraph, it is unclear why the power in clause 51 is thought necessary where amendments to subordinate legislation are in issue, given that the relevant Minister could generally amend or revoke existing subordinate legislation simply by making a further instrument in exercise of the same powers as before.

25. For Parliament, the principal disadvantage of the proposed power is that, like most delegated legislative powers, either House ultimately has no choice but to take or leave the draft instrument as a whole. If, for instance, Schedule 16 to the Bill had instead been packaged as a draft order under clause 51, the fate of the entire collection of provisions listed in that Schedule would need to be determined by a vote on a single motion—or, in the case of a committee, by a single recommendation. Even under the Legislative and Regulatory Reform Act 2006, the subject matter(s) of a draft order can usually be expected to have some generic integrity. We are also aware that the Government have yet to respond fully to the question raised in our Special Report of last Session about re-affirmation of undertakings given by the previous administration (that they would not seek to use orders under the 2006 Act to make highly controversial

changes; nor would they pursue a proposal in the face of opposition from the relevant committee).

26. Finally, it is unclear to us what is to happen where a House resolves, or its committee recommends, that a draft order should not be made. There is no explicit provision (as in the 2006 Act) for the Minister to come back with a revised draft order. Nor is there any express provision for representations by either House or its committee (beyond the fatal resolution or recommendation that the draft order should not be made), and therefore no requirement that the Minister must consider such representations etc and set out the Government's response to them before laying a further order.

27. We are therefore strongly of the view that the power proposed in clause 51 is inappropriate. We found the explanations advanced in the memorandum as to its perceived necessity to be wholly unconvincing; and we do not regard the procedural arrangements in clauses 54-56 as in any sense mitigating the unacceptability of the power.

CLAUSES 58-61: GUIDANCE ABOUT REGULATORY FUNCTIONS

28. Clause 58(1) imposes on a person exercising regulatory functions to which the section applies a duty (amplified in subsection (2)) to have regard, in the exercise of the functions, to the desirability of promoting economic growth. Clause 59 enables a Minister to specify by affirmative order the regulatory functions to which clause 58 applies. Clause 60 enables the Minister from time to time to issue guidance as to the performance of the duty under clause 58; and a person who has a duty under that clause must have regard to the guidance. The guidance must be laid in draft and approved by both Houses before it may be issued; and it comes into force on a date specified by order under subsection (9).

29. In structural terms, these provisions very closely reflect those of Part 2 of the Legislative and Regulatory Reform Act 2006, save that the duty imposed on regulators by section 21 of that Act is in much more general terms, and the nature of that duty is explained in a code of practice rather than in guidance as here. But the requirements under the 2006 Act for Parliamentary control are closely comparable: an affirmative resolution is required for the code of practice and for the order which specifies the regulatory functions to which the duty relates. The order which brings the code into force is, like the order that is to bring the guidance into force, subject to no procedure – but that does not seem to us inappropriate because the guidance will itself have received affirmative approval.

30. There is, however, one aspect of these proposals that we do not regard as satisfactory. Clause 60(2) enables the inclusion of “guidance as to ... the meaning of ‘economic growth’”. Given the fundamental importance of that expression to the discharge of the duty under clause 58, it seems to us surprising that its definition should be left to guidance (even guidance that requires an affirmative resolution). In our experience, guidance is generally worded with much less care and precision than a statutory instrument, and is quite unsuitable for conveying the meaning of a key

expression forming the basis of a statutory duty. **To that limited extent, we consider the delegation arrangements in clauses 58-61 to be inappropriate.**

SCHEDULE 1: APPRENTICESHIPS

31. Schedule 1 inserts a new Chapter A1 into Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 to make provision about apprenticeships in England. Several of the provisions of existing Chapter 1 (including delegated powers), which at present applies to England and Wales but will in future be confined to Wales only, are reflected in the new Chapter A1.

32. Section A1(2) in effect defines an “approved English apprenticeship” in terms of either an “approved English apprenticeship agreement” or an “alternative English apprenticeship”. Whereas the former is substantially described in subsection (3) (though the description may be supplemented by regulations), the description of the latter is left to regulations under subsection (4), as amplified by subsection (5). All regulations under subsections (2), (3)(c) and (4) are subject to negative procedure, which, in the first two respects, is in line with broadly equivalent provisions in the existing Chapter 1. But the existing equivalent of the power conferred by subsection (4) requires affirmative procedure.

33. Paragraph 34 of the memorandum explains why it is now thought that the power should be negative. **We find that explanation persuasive, and do not therefore regard the negative procedure as inappropriate.** That conclusion is consistent with the view we took of the equivalent provision when we considered the Bill that became the 2009 Act.

34. New section A4(1) enables the Secretary of State to delegate any of his functions under new Chapter A1 to a person designated by him. Subsection (2) precludes the delegation of any power to make regulations, but provides that “subsection (1) ... does include work done in preparing regulations”. We are unsure what effect those words are intended to have, and we have not found any explanation of them either in the Notes (which mention the power of delegation only in passing in paragraph 237) or in the memorandum. There is clearly a distinction to be drawn between “delegation” (as envisaged by section A4(1)) where the function in effect becomes the function of someone else, and “contracting out”, where the services required to enable a person to exercise his functions may be bought in from outside. But we do not readily understand how in practice the function of preparing regulations might be divorced from the function of making them, and **we consider that new section A4(2) accordingly requires further explanation.**

SCHEDULE 8, Part 6: ACCESS BY DISABLED PERSONS TO RAIL VEHICLES

35. Section 182 of the Equality Act 2010 enables the Secretary of State to make regulations (“rail vehicle accessibility regulations”) for securing that it is possible for disabled persons to, among other things, get on to and off rail vehicles safely and without undue difficulty. Section 183 enables an “exemption order” to be made authorising the use of a rail vehicle that does not comply with the regulations under section 182. Orders under section 183 are statutory instruments and are affirmative

unless they fall within a description of such orders for which the negative procedure is authorised by regulations under section 184.

36. Part 6 of Schedule 8 seeks to make the same change as respects Parliamentary scrutiny as was proposed in 2004-05 in the Bill that became the Disability Discrimination Act 2005, so that exemption orders would no longer be statutory instruments. Paragraphs 219-222 of the memorandum set out the benefits that the Government believe would result from the change, in terms of cost, speed, Parliamentary time, and consistency with parallel provision under EU law. The proposal is, moreover, supported by the Disabled Persons Transport Advisory Committee (“DPTAC”), which must be consulted before an exemption order is made. We have examined those explanations with some care, but we do not consider that the position has changed greatly since our predecessor committee considered the matter in 2004-05. **We remain of the view that these orders should continue to be made by statutory instrument, but should attract the negative procedure.** We do not believe that it is now necessary to retain the present complex arrangements (described at the end of our previous paragraph) for determining whether some other form of Parliamentary procedure should apply.

House of Commons Education Committee, 16 October 2013

The Education Committee is grateful for the invitation to submit comments to the Joint Committee on the aspects of the draft Deregulation bill relevant to education.

The Committee has not covered any of the areas covered by the draft bill in the course of its inquiries and therefore has no comments to make on the evidence base, impact or desirability of the proposed changes. However, based on Members’ knowledge and experience of the education field, the Committee would like to draw your attention to those measures which are likely to be of greatest significance. These are:

- The impact on the provision of education of the provisions in the draft Bill, particularly those in relation of removal of the FE teaching qualification;
- The transfer of the responsibility for determining a school’s term and holiday dates from the local authority to the governing bodies of individual schools; and
- The proposed changes to the duties of governors in relation to schools under section 33 and schedule 14.

The Committee also suggests that the following measures should be included in the bill:

- The repeal of the 2007 regulations on school governing bodies, which have largely been replaced by later regulations; and
- The removal of regulatory barriers to the forming of clusters and federations of school governing bodies

I hope that this is helpful.

Dr Lynn Gardner, Clerk of the Committee

House of Commons Justice Committee, 22 October 2013

Thank you for your letter of 19 August on behalf of the Joint Committee on the draft Deregulation Bill seeking the Justice Committee's views on relevant provisions of the draft bill.

The Justice Committee offers the following comments on clauses 35 to 39 of the draft bill:

Clause 35

This clause removes the legal duty imposed on the Senior President of Tribunals to make an annual report to the Secretary of State for Work and Pensions on the standards of decision-making achieved by the Department of Work and Pensions in the making of decisions against which an appeal lies to the First-tier Tribunal.

The effect of this provision is straightforward. However, it comes against a background of disapprobatory reports published by the Senior President of Tribunals on the standards achieved by the Department of Work and Pensions and the company that carries out fitness to work assessments, Atos. His Honour Judge Martin noted in evidence to the Commons Work and Pensions Committee that "the same problems and errors are repeated year after year, with no sign that anyone takes any notice of feedbacks from Tribunals ..." His concerns are borne out by the high number of successful appeals against DWP decisions to grant benefits based on Atos assessments, almost half of all cases brought to court.

A Commons written answer of 18 October 2013 gave the Government's reasons for the proposed repeal of the Senior President's report duty:

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131018/text/131018w0001.htm#13101842000084>

The Joint Committee may wish to ask the Senior President of Tribunals for his opinion on the value of his annual report and whether he supports the abolition of the duty to make such a report.

Clause 36

This clause amends the law with regard to witness statements and other matters of evidence in a criminal trial by repealing the statutory provisions and replacing them with a power by the Criminal

Procedure Rule Committee to replace them with Rules. The previous statutory provisions are the 'default' position until the Criminal Procedure Rule Committee provides otherwise.

The Explanatory Notes envisage that the Criminal Procedure Rule Committee will use its new powers to streamline court procedures while ensuring "the rules provide appropriate safeguards for defendants..." This would also permit consolidation of matters of procedure in the criminal courts. On that basis, this measure is to be welcomed. Together with clauses 37 and 38, however, it is suggested that the Joint Committee may wish to ask the Criminal Procedure Rule Committee whether it welcomes these provisions. If the Criminal

Procedure Rule Committee is likely to simply substitute these statutory provisions with identical Rules then it must be queried whether inclusion of these clauses in legislation represents a good use of Parliamentary time.

Clause 37

This clause amends section 12(7) of the Magistrates' Courts Act 1980 to provide that the Criminal Procedure Rules may dispense with the requirement that the statement of facts, any notice served on the defendant, the guilty plea by the defendant and any written statements given in mitigation must be read aloud in court before that court may accept a written guilty plea without the defendant being present.

This clause is intended to speed up the process of guilty pleas in the Magistrates' Court for comparatively minor offences such as minor road traffic offences. Clearly any measure that seeks to save court time is welcome. The only caveat would be that this measure reduces the public nature of justice in these cases. However, as the provision merely allows the Criminal Procedure Rule Committee to adopt this approach, presumably after the usual consultation and consideration, this measure can also be welcomed in principle.

Clause 38

In all but one instance, this clause seeks to give the Criminal Procedure Rule Committee power to make Criminal Procedure Rules in areas where no statutory procedure applies. The exception is the removal of notice requirements for warrants for "excluded or special procedure material" in Schedule 1 of the Police and Criminal Evidence Act 1984. Unlike the clauses detailed above, the draft bill does not leave the current statutory procedure as the 'default' position, it repeals the provisions and gives the Criminal Procedure Rule Committee power to create a new procedure in future.

The Explanatory Notes do not explain why the notice provisions in Schedule 1 of PACE are being repealed without leaving anything in their place. It is suggested the Government are asked what its rationale is for this approach.

Clause 38 also requires, in two instances, under the Proceeds of Crime Act 2002 and the Criminal Justice and Police Act 2001, that the Criminal Procedure Rule Committee apply to a judge when stating procedure in the relevant proceedings. It is suggested the Government is asked why there is this difference of approach between these provisions and the others detailed in this draft bill.

Clause 39

This clause makes certain changes to those offenders to which Multi-Agency Public Protection Arrangements (MAPPA) apply. These are the arrangements that criminal justice and social care agencies are obliged to make under the Criminal Justice Act 2003 to co-operate with each other in managing the risks posed by certain sexual, violent and other offenders. The clause is concerned with the duty as it relates to those offenders who receive, or meet the conditions to receive, a disqualification order, which prevents them from working with children. The court's power to impose disqualification orders was repealed by the Safeguarding Vulnerable Groups Act 2006 but the MAPPA arrangements continue to apply automatically to those who received them in the past. The Government does not

see this as necessary so the clause makes the necessary amendments to ensure that MAPPA arrangements do not apply solely for this reason. Further amendments are made to ensure that this change does not result in a failure to manage serious offenders. MAPPA arrangements are therefore extended to those offences for which a disqualification order could have been imposed which did not previously fall within the duty – parental abduction of a child, trafficking

a child for exploitation, and various drugs offences against a child—provided they meet the required level of seriousness set out the Criminal Justice Act 2003.

This clause does not appear to be contentious as the removal of one means of public protection is largely replaced with another. It is possible that some offenders, particularly those that have committed offences of lesser seriousness that might have met the threshold for disqualification orders but might not do so for MAPPA arrangements, will not be subject to the same level of safeguarding as they were previously. The Joint Committee might wish to ask the Government the extent to which this might be the case.

I hope these comments are helpful to the Joint Committee.

Nick Walker, Clerk of the Committee

House of Commons Transport Committee, 14 October 2013

There are a number of issues relating to transport which are raised in the draft Bill and to which we wish to draw your attention.

Firstly, we support the measures in clause 22 and schedule 7 which would permit PTEs to be involved in the provision of passenger rail services beyond their immediate areas. This is required in order to enable PTEs and other local authorities to have a greater role in rail franchising, something we expressed support for in our Rail 2020 report, which was published earlier this year (7th Report, 2012-13, paragraphs 61-65).

We note that in Schedule 8 of the draft Bill, the requirement for the Secretary of State to approve permit schemes for conducting roadworks is removed. Although we are not opposed to this measure in principle, we have previously commented on the limited evidence of how permit schemes work in practice and recommended that wide variations between local authorities should be assessed where they do not reflect differences in local circumstances (see 9th Report, 2010-12, paragraphs 38-43). The Government rejected our recommendations (11th Special Report, 2010-12). We remain concerned that a multiplicity of approaches to permit schemes could increase costs to businesses which deal with numerous local authorities. This is an issue your Committee might wish to explore.

We took oral evidence on 10 September from the Shipping Minister on the Government's maritime strategy and asked for further information about section 48 of the draft Bill, which deals with ambulatory references to international shipping instruments. The clause appears to give a far-reaching power to the Government to amend UK law to reflect changes to maritime treaties, bypassing Parliament entirely. We were told that this proposal only relates to technical changes which are "clogging up the system". The DfT has sent us a follow-up letter on this point, which I enclose. We think this issue should be explored further. The clause may need to be amended to ensure that it cannot be used to

prevent parliamentary consideration of substantive changes to international instruments which have been agreed by the Government but ought to be debated in and approved by Parliament.

We have received a submission from the UK Maritime Pilots' Association about clause 25, relating to the circumstances in which a marine accident investigation can be reopened. I understand that you have also received this submission. In our view, it raises an important point, which ought to be considered.

We have no comments at present on other aspects of the draft Bill but will write again if other matters are brought up with us.

Louise Ellman MP, Chair of the Committee

House of Lords Communications Committee, 22 October 2013

Thank you for your letter of 30 July inviting the Communications Committee to comment on the Draft Deregulation Bill.

The only section of the Bill which falls within the Communications Committee's remit is 26-

Communications

26 Repeal of power to make provision for blocking injunctions

In the Digital Economy Act 2010, omit sections 17 and 18 (which confer power on the Secretary of State to make regulations about the granting by courts of injunctions requiring the blocking of websites that infringe copyright).

As you know, the Digital Economy Act received Royal Assent towards the very end of the last Parliament and most of it came into force in June 2010. However, following criticism of the powers relating to website blocking, the Government asked Ofcom to review whether sections 17 and 18 of the Act were technically workable⁴⁰². Following this review, the Government announced in August 2011 that they would not bring forward site blocking regulations under the Digital Economy Act at that time but would “be doing more work on what measures can be pursued to tackle online copyright infringement.”⁴⁰³

Whilst we make no comment on the merits of sections 17 and 18 of the Digital Economy Act 2010, we are not aware of any further work which the Government has done to identify other measures which could be pursued to tackle online copyright infringement. It seems to us that there might be merit in the Joint Committee on the draft bill firstly ascertaining what further research the Government has carried out on this issue and second exploring with witnesses the merits or otherwise of dropping sections 17 and 18 of the Digital Economy Act 2010.

I hope this is helpful to your Committee.

402 <https://www.gov.uk/government/news/ofcom-to-review-sections-of-digital-economy-act>

403 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78090/Next-steps-for-implementation-of-the-Digital-Economy-Act.pdf page 7.

Lord Inglewood, Chairman of the House of Lords Select Committee on Communications

Joint Committee on Human Rights, 30 October 2013

Thank you for your message of 11 October inviting my Committee to comment on the human rights implications of the draft Deregulation Bill which is being scrutinised by the Committee you chair. Following a meeting at staff level on 23 October, between our legal advisers and one of the lawyers advising your Committee, my Committee has asked me to write to you about the following issues.

Implications of the “growth duty” for compliance with the Paris Principles

My Committee is concerned about the implications for the UK’s compliance with the UN’s Paris Principles if the proposed duty on regulators to have regard to the desirability of promoting economic growth in clause 58 of the draft Bill is intended to apply to national human rights institutions such as the Equality and Human Rights Commission (“the EHRC”).

Clause 60 of the Bill provides that any regulator who is subject to the proposed new duty “must” have regard to any guidance issued by the Secretary of State (clause 60(4)), and that guidance may include guidance as to the ways in which regulatory functions may be exercised so as to promote economic growth (clause 60(2)(b)). Such a duty to have regard to ministerial guidance about how to exercise its functions would appear to be incompatible with the requirement in the Paris Principles that national human rights institutions must be independent of the Government, and may therefore imperil the “A” status accreditation enjoyed by the EHRC. This significant risk could be easily avoided if the proposed new duty did not apply to national human rights institutions such as the EHRC.

Tribunals’ power to make wider recommendations in discrimination cases

The draft Bill would remove the power conferred on employment tribunals by the Equality Act to make wider recommendations in discrimination cases (clause 2, amending s. 124 Equality Act 2010). The Government does not appear to have carried out any assessment of the recommendations which have so far been made by tribunals under this power since it came into force, nor does it appear to have provided evidence that it imposes unjustified burdens on employers. The power to make wider recommendations in cases which reveal systemic problems has recently been conferred on coroners, in order to prevent future deaths and to provide greater protection for the right to life. My Committee considers the same reasoning to apply in the context of discrimination cases which raise systemic issues: it will help to prevent further discrimination and so enhances the law’s protection for equality.

In the absence of any clear evidence that such recommendations have proved disproportionately burdensome on employers, and provided tribunal procedures ensure that employers always get an opportunity to be heard on the substance and form of any proposed recommendation before it is made, clause 2 of the draft Bill should be deleted.

Henry VIII Clause

The draft Bill contains a Henry VIII clause of extraordinary breadth: a power for a minister by order to provide for legislation to cease to apply “if the Minister considers that it is no longer of practical use” (clause 51).

The Delegated Powers Committee will no doubt wish to comment on this proposed power, but the Joint Committee on Human Rights has also criticised such clauses in the past because the power they purport to confer is so wide that it could be used to reduce legal protection for human rights without full parliamentary scrutiny.

In the Committee’s view, legislation which is judged to be “no longer of practical use” should be repealed by statute not by ministerial order.

I look forward to seeing a copy of your Committee’s Report.

Dr Hywel Francis, Chair

House of Commons Regulatory Reform Committee, 11 October 2013

1. The Regulatory Reform Committee⁴⁰⁴ understands that the Joint Committee’s scrutiny of the draft Deregulation Bill will focus on what is in the draft Bill rather than what is not. However, we are disappointed that the Government has not used the draft Bill as an opportunity to rationalise the current range of strengthened statutory scrutiny procedures, as was recommended by the Delegated Powers and Regulatory Reform Committee of the House of Lords in 2012. In our view there is lots of existing legislation intended to reduce regulation, but little use is made of it.

2. Legislative reform orders made under the Legislative and Regulatory Reform Act are one of eleven existing statutory procedures with strengthened statutory scrutiny procedures. It seems ironic that the draft Deregulation Bill would bring into force yet another statutory procedure for deregulation, through the order making powers proposed in clause 51. We consider the existence of so many variations of these procedures to be unhelpful to Parliament and the public in understanding the scrutiny process. Rationalising these various procedures would in our view represent a more enlightened approach to regulatory reform.

3. Given the Regulatory Reform Committee’s remit, our comments are largely limited to the proposed order making powers contained in the draft Bill. Specifically:

- i. The House of Lords Delegated Powers and Regulatory Reform Committee’s 2012 report ‘Strengthened Statutory Procedures for the Scrutiny of Delegated Powers’ recommended that:

“in proposing a strengthened scrutiny procedure in any future Bill the Government should normally use an existing model rather than creating

⁴⁰⁴ The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

a new variation; and they should explain the basis for the decision. If the Government exceptionally take the view that it is necessary to create yet another variation rather than using an existing statutory scrutiny procedure, the reasons should be set out clearly in the Explanatory Notes to the Bill and in the delegated powers memorandum.”

Given that there are eleven existing strengthened statutory scrutiny procedures, why has the Government sought to introduce another, separate procedure through the draft Bill? Is this proportionate? Could an existing statutory scrutiny procedure be used instead?

- ii. Are the proposed order-making powers in relation to legislation which is “no longer of practical use” (clause 51 draft Deregulation Bill) sufficiently distinct from the order-making power contained in s1(1) Legislative and Regulatory Reform Act 2006 which is to “remove or reduce any burden, or the overall burdens resulting directly or indirectly for any person from any legislation” (s1(2) Legislative and Regulatory Reform Act 2006)? Does the Government intend to issue guidance to clarify this distinction to avoid the risk of inappropriate use of deregulatory mechanisms?
- iii. The draft Bill provides for a period of 40 days from the laying of the draft order during which “a committee of either House charged with reporting on the draft order” may recommend that the order be not made. This proposed procedure does not observe the distinct procedural options set out in the Legislative and Regulatory Reform Act 2006. In particular, the Regulatory Reform Committee notes that there is no option to “upgrade” the applicable procedure which would increase the period of Parliamentary scrutiny to 60 days. This procedure (superaffirmative) has been invoked several times during consideration of draft Legislative Reform Orders by this Committee and the Delegated Powers and Regulatory Reform Committee. What is the Government’s justification for its decision not to provide for the opportunity for a longer period of Parliamentary scrutiny?
- iv. Similarly, the draft Bill does not contain any pre-conditions or tests which must be met before draft orders can be made. Does this risk undermining Parliamentary scrutiny?
- v. Is it the Government’s intention that the order-making powers conferred on ministers under the Legislative and Regulatory Reform Act 2006 are unaffected by the draft Deregulation Bill?
- vi. The draft Bill refers to a committee of either House charged with reporting on the draft order during the 40 day scrutiny period. Which committee(s) would undertake this scrutiny?

- vii. In addition, the draft Bill introduces a duty on persons exercising certain regulatory functions to “have regard” to the desirability of “promoting economic growth”. Were other incentives considered by the Government?

Speaker’s Committee on the Electoral Commission, 24 October 2013

The Electoral Commission (EC) and the Local Government Boundary Commission England (LGBCE) have approached the Speaker’s Committee seeking its support for amendments to the statutory governance arrangements set out in the Political Parties, Elections and Referendums Act 2000 and the Local Democracy, Economic Development and Construction Act 2009 respectively. The changes sought are as follows.

- To enable both organisations to appoint a maximum of two lay members to their committees and sub-committees, most particularly their Audit Committees. Such a change would be consistent with current recognised best practice - currently the statutes restrict committee membership to Commissioners only;
- To introduce a more flexible regime for the production of value for money reports on the organisations by the NAO – the statutes currently require a report on each organisation to be produced once a year; and,
- Similarly, to introduce a more flexible regime for the production of five-year plans, which must currently be produced annually for examination by the Committee.

Membership of Audit Committees.

The current provisions appear in paragraph 8 of Schedule 1 to the Political Parties, Elections and Referendums Act 2000 (EC) and paragraph 5 of Schedule 1 to the Local Democracy, Economic Development and Construction Act 2009 (LGBCE).

At present, committees of both the Electoral Commission and the LGBCE must be made up of Commissioners alone. Both organisations wish to be able to appoint an independent person, with relevant skills and experience, to their audit committee in line with current Treasury guidance on audit committees.

The Electoral Commission has also proposed that it might be provided with powers to include independent members on other committees, such as the remuneration committee. The LGBCE has confirmed that it is not seeking statutory powers to include independent members on any committee other than its audit committee.

The Electoral Commission believes that the appointment of independent committee members should be a matter for the Commission itself, and such members should not have any statutory restrictions on their formal participation in committees.

The Committee is broadly supportive of these proposals and recognises the benefit of best practice being applied to the two bodies. The Committee considers that:

- the Electoral Commission should be able to appoint an independent member not only to its audit committee, but also to other committees and sub committees;
- there should be a statutory limit of two independent members on each relevant committee at both organisations;
- the Electoral Commission should be able to appoint no more than two independent members to sub-committees who need not also be members of the parent committee;
- restrictions on political activity which apply to ‘ordinary’ Commissioners at each organisation should also apply to independent members of that organisation’s committees;
- there should be no statutory restrictions on independent members’ participation in committees (ie. they should be able to chair a committee and to vote); and
- the organisations should be able to recruit independent members directly, without reference to the Committee; but should inform the Committee when such individuals have been appointed. The Committee recognises that this arrangement may be agreed between the bodies concerned rather than by legislation.

Frequency of value for money reports

The current provisions appear in paragraph 16 of Schedule 1 to the PPERA 2000 (EC) and paragraph 13 of Schedule 1 to the LDEDCA 2009 (LGBCE). The Speaker’s Committee is required, under the legislation, to receive such reports, and to have regard to the most recent in its examination of the organisations’ estimates and five-year plans. At present, the Comptroller and Auditor General (C&AG) is required by statute to examine each organisation annually. The C&AG has written to the Committee indicating that he would support a reduction in the frequency of value for money studies, believing that an annual study is disproportionate to the size and spending power of the EC and LGBCE.

The Committee considers a statutory annual value for money study may be disproportionate for small organisations such as the EC and LGBCE. The Committee has agreed that a reduction in the frequency of value for money reports would provide modest savings to the NAO as well as the EC and LGBCE at little risk of detriment to the taxpayer. The Committee recommends, therefore, that:

- the C&AG should no longer be required to report annually. Production of a value for money report should be formally linked to, and precede the production of, a five year plan (see below);
- the Speaker’s Committee on the Electoral Commission should have the discretion to commission value for money studies outside the normal cycle, if required.

Five year plans

Current provision appears in paragraph 15 of Schedule 1 to the PPERA 2000 (EC) and paragraph 12 of Schedule 1 to the LDEDCA 2009 (LGBCE). At present both organisations are required annually to produce a new five-year plan for approval by the Committee, in

consultation with HM Treasury. The Committee has agreed, in principle, that annual scrutiny of the medium-term strategy and financial forecasts is disproportionate. Treasury officials have indicated that they would be content with a more 'light touch' regime. The proposed changes would alter the frequency of reports but leave other details of the process unchanged.

The Committee has agreed the proposal in principle and that:

- the organisations should no longer be required to produce a new five-year plan every year. A five-year plan should be produced for examination by the Committee for the first full financial year of the Parliament (ie. to take effect on 1 April following the general election);
- A subsequent five-year plan should be produced to take effect either 24 or 36 months later; and
- production of a value-for-money study should be linked to production of each five-year plan (see above).

The Committee recognises that the annual production of vfm reports and five-year-plans may represent an unnecessary cost and these proposed changes would provide a modest saving for the NAO as well as the EC and LGBCE with little risk of detriment to the taxpayer.

The Committee understands that these changes will require primary legislation and that it is for the Government to determine a suitable legislative vehicle should it decide to give effect to these proposals. While the Committee understands that the Deregulation Bill may transpire not to be an appropriate legislative vehicle, it has received advice on possible amendments to the draft bill, which are appended to this submission. The amendments do not explicitly deal with the Speaker's Committee's power to commission vfm studies not linked to five year plans nor specify that external members on a sub-committee need not be members of a main committee: our understanding is that this level of detail is unnecessary.

- 1) To enable both organisations to appoint lay members to their committees and sub-committees, most particularly their Audit Committees. Such a change would be consistent with current recognised best practice - currently the statutes restrict committee membership to Commissioners only;
- 2) To introduce a more flexible regime for the production of value for money reports on the organisations by the NAO – the statutes currently require a report on each organisation to be produced once a year; and,
- 3) Similarly, to introduce a more flexible regime for the production of five-year plans, which must currently be produced annually for examination by the Committee.

Eve Samson

Secretary to the Speaker's Committee on the Electoral Commission

SPEAKER'S COMMITTEE ON THE ELECTORAL COMMISSION

DRAFT AMENDMENTS

Electoral Commission

1.(1) Schedule 1 to the Political Parties, Elections and Referendums Act 2000 (the Electoral Commission) is amended as follows.

(2) For paragraph 8(3) (committees) substitute–

“(3) A committee or sub-committee may include persons who are not Electoral Commissioners (“independent members”); and–

- (a) a committee or sub-committee may not include more than two independent members,
- (b) a person may not be appointed as an independent member if the person would be ineligible for appointment as an Electoral Commissioner by reason of section 3(4), and
- (c) an independent member may do anything that another member can do (including chairing a committee or sub-committee).”

(3) In paragraph 15 (five-year plan)–

(a) in sub-paragraph (1) after “as is mentioned in paragraph 14” insert “in respect of the first full financial year of each Parliament”,

(b) after sub-paragraph (1) insert–

“(1A) A further plan must be submitted in respect of the third or fourth full financial year of each Parliament.”

(4) In paragraph 16 (annual examination of Commission by Comptroller and Auditor General)–

(a) in the heading omit “Annual”, and

(b) in sub-paragraph (1) after “in each year” insert “in respect of which a five-year plan is submitted”.

Local Government Boundary Commission for England

2.(1) Schedule 1 to the Local Democracy, Economic Development and Construction Act 2009 (Local Government Boundary Commission for England) is amended as follows.

(2) In paragraph 5 (committees) at the end insert–

“(4) But the Audit Committee (or, if there is no committee with that title, any committee established for audit purposes) may include up to two persons who are not members of the Commission (“independent members”); and–

- (a) a person may not be appointed as an independent member if the person would be ineligible for appointment as an ordinary member under paragraph 1(3), and

(b) an independent member may do anything that another member can do (including chairing the committee).”

(3) In paragraph 12 (five-year plan)–

(a) in sub-paragraph (1) For “An estimate under paragraph 11” substitute “The estimate under paragraph 11 in respect of the first full financial year of a Parliament”, and

(b) after sub-paragraph (1) insert–

“(1A) A further plan must accompany the estimate under paragraph 11 in respect of the third or fourth full financial year of each Parliament.”

(4) In paragraph 13 (annual examination by Comptroller and Auditor General)–

(a) in the heading omit “Annual”, and

(b) in sub-paragraph (1) after “in each year” insert “in respect of which a five-year plan is prepared”.

Appendix 6: Letters from the Rt Hon. Kenneth Clarke QC MP, Minister without Portfolio, Cabinet Office

The Rt Hon. Kenneth Clarke QC MP, 5 November 2013

The purpose of this letter is to outline the reasons for the new order-making power that would enable a Minister of the Crown to disapply, by an order made by statutory instrument, and subject to the will of Parliament, legislation (either primary or secondary) which the Minister considers to be no longer of practical use.

I would like to address some of the concerns raised by the Law Commission.

Reasons for the new order-making power:

The Government shares the objectives of the Law Commission to make the law more accessible and to remove obsolete legislation from the statute book. The Government believes that the new power would add to our overall ability to achieve that and poses no threat to the responsibilities and work of the Law Commission.

The order-making power would be supplementary, not duplicatory, to the work being carried out by the Law Commission's Statute Law Repeals (SLR) work.

- It would allow departments to follow a timeframe which meets their own priorities (Statute Law Repeals Bills are currently produced every three to four years).
- It would allow departments to focus on areas of law which for the time being are not being considered by the Law Commission.
- It is likely to be used to disapply subordinate, as well as primary, legislation. In practice, the Law Commission's SLR Bills are confined to primary legislation.

The order-making power would also be supplementary, not duplicatory, to Part 1 of the Legislative and Regulatory Reform Act 2006. The existing provisions within the 2006 Act were not drafted to deal with legislation that is no longer of practical use, and in many cases it would be difficult to show that disapplying this type of legislation removes a live 'burden' within the meaning of that Act.

Safeguards:

Clauses 54 to 56 provide the proposed Parliamentary safeguards for the use of this power. The procedure chosen for making an order is essentially the same as that set out in section 16 of the Legislative and Regulatory Reform Act 2006. We have deliberately avoided creating a new form of Parliamentary procedure, consistent with the recommendation of the Delegated Powers and Regulatory Reform Committee in its 3rd Report of the 2012-2013 session (Special Report: Strengthened Statutory Procedures for the Scrutiny of Delegated Powers). Like the LRO procedure, it differs in important respects from the usual form of negative procedure and these differences supply the key safeguards:

- The Minister is required to consult as appropriate before finalising his proposals.
- An order must be laid before Parliament in draft alongside a document explaining why the Minister considers that the legislation is no longer of practical use and giving details of consultation undertaken and changes made as a result.
- A committee of either House can recommend that an order in terms of the draft should not be made. If it does so, the Minister will not be able to proceed with the making of the order unless the committee's recommendation is rejected by a resolution of that House.
- Even if there is no adverse recommendation by a committee, the Minister will not be able to proceed if either House of Parliament so resolves.

As a whole these safeguards are stronger than those for the affirmative procedure.

Concerns raised by Law Commission:

The Law Commission provided you with written evidence and subsequent oral evidence on 16 October. The main concerns expressed by the Commission were:

- There is no need for a new procedure as it would simply duplicate the arrangements for repealing obsolete legislation that Parliament established in the Law Commissions Act 1965 and its special Parliamentary procedure.
- Rigorous analysis, research and consultation are needed to determine whether something is redundant. The Commission questions whether departments will be able to make the time and expertise available to carry out the work properly. This will increase the risk of error.
- The provision made by clause 54(1)(a) for consultation with the Law Commission is unsatisfactory.
- There would be a lack of legal certainty as an order could potentially be challengeable by judicial review, unlike primary legislation.

The Government noted that during the evidence session the Right Honourable Lord Justice Lloyd Jones explained to the Committee that when it came to the Law Commission's law reform work, the measures coming out of the Red Tape Challenge would not be "the sort of area that [the Commission] would enter or which expert legal views would necessarily be of assistance. It seems ... to be more political." The Government agrees with this point as most of the Bill (aside from Schedule 16) deals with matters which could not be dealt with as part of either the Commission's SLR work or its other law reform work.

Government response to these concerns:

Concern over unnecessary duplication of procedures

The above point raised by the Right Honourable Lord Justice Lloyd Jones is also important in terms of the Law Commission being an independent body that is apolitical. The

Commission must be very cautious about which measures it allows into its Bills (including SLR Bills) if it is to maintain the confidence of Parliament and to be allowed to use truncated Parliamentary process. Ministers, however, may reasonably take a different view about whether a measure is no longer of practical use. It would be right under those circumstances for the Minister to make the case for repeal under the new process.

The Government does not see either Schedule 16 or the proposed new order-making procedure in the Deregulation Bill as duplicating the Law Commission's SLR work. It would only be duplication if both the Government and the Commission were trying to disapply the exact same law. The Commission focus on specific areas of the law, for instance their website says that projects to be researched for their next Statute Law Repeals Report (due for publication in 2016) are likely to include laws on overseas territories and churches. Schedule 16 and the new order-making power provide departments with the scope to focus on areas of law which for the time being are not being considered by the Law Commission.

Concern over the need for rigorous analysis, research and consultation

In the course of their work, departments regularly repeal legislation and know the importance of accuracy and the need to consider saving, transitional or consequential provisions (which would be made through clause 57). Departmental lawyers would also be able to consult the Office of the Parliamentary Counsel at any time on difficult drafting points, and any draft order which amends primary legislation would be subject to scrutiny by Parliamentary Counsel before being laid. All draft orders would also be subject to internal clearances.

The Deregulation Bill itself demonstrates the care which departments take in this matter. For example, Part 1 of Schedule 5 to the Bill repeals the Deeds of Arrangement Act 1914 as part of a package of insolvency measures. The department's research indicated that there was still one person who had a deed of arrangement under the Act. Consideration was given to how to deal with this and it was decided to include a special saving provision in paragraph 3 of Schedule 5 (rather than put this in Schedule 16 – since it was not clearly 'of no practical effect').

Concern over the need for detailed consultation

The Government fully accepts that there should be appropriate consultation and clause 54 reflects this. There will be cases where it is clear that a piece of legislation is no longer of practical use (for example, where the legislation has expired or where it is otherwise spent as a matter of law) and therefore a more light touch level of consultation can be undertaken than is argued for by the Law Commission. It would fall to the Minister to explain the nature of the consultation to the relevant committee as part of the order-making process.

Concern over being made a statutory consultee

The consultation requirement in clause 54(1)(a) was included because of the Law Commission's existing role. Its principal purpose was to ensure that the Law Commission would be aware of what the government proposed to do under the power. It might, for example, become clear that a particular proposal was already included in a current Law Commission SLR programme of work. Consultation reduces the potential for overlap. The

requirement was not intended to have the effect of disrupting and delaying the Commission's planned work or obliging them to do research. Responsibility for the contents of orders under clause 51 would be that of the departments involved in their making.

If the Committee so recommend, we could amend the draft Bill before introduction to omit any express mention of the Law Commissions. In this case, the Commissions would simply fall under 'other persons' in clause 54 (1)(b). The omission of any express reference of the Law Commissions would not therefore prevent the Commissions being approached for consultation if the Minister considers it is appropriate to do so.

Concern over potential judicial review

The Government acknowledges that orders are potentially challengeable under judicial review. However, this applies generally to all subordinate legislation. There are now a number of powers to amend or repeal primary legislation by subordinate legislation (including the power to make a legislative reform order under section 1 of the Legislative and Regulatory Reform Act 2006). The Government is not aware that this has given rise to legal uncertainty and the present proposal is less significant than the existing examples in that it only applies to obsolete law.

Departmental officials and lawyers, and the Office of the Parliamentary Council will be aware of the possibility of judicial review and take steps to minimise the risk of a successful challenge by ensuring that orders under clause 51 are within the powers conferred by the clause and that the correct procedures are followed.

Measures contained in Schedule 16 to the Deregulation Bill:

Finally, the Government notes the Joint Committee's query as to why the measures contained in Schedule 16 to the Deregulation Bill were not put forward as candidates for a Law Commission's SLR Bill.

Particular reference was made to the Grey Squirrels (Prohibition of Importation and Keeping) Order 1937. This would not have been suitable as an SLR candidate because it is not a straight revocation. For this reason it is not in Schedule 16 (which makes provision for legislation which is no longer of practical use to cease to apply), but in paragraph 2(3) of Schedule 11 (other measures relating to animals, food and the environment). Moreover, this amendment is one of several amendments to the Destructive Imported Animals Act 1932 and is more efficient to have them located in one place in the Bill and to be considered by Parliament together.

Generally, the principal reasons for the measures contained in Schedule 16 of the draft Deregulation Bill not being nominated as SLR candidates are:

- The Commission generally brings forward a SLR Bill every four years (the last was in 2012, and the next will be introduced in 2016), but departments have been tasked with implementing Red Tape Challenge measures in this Parliament (a number of which are contained within Schedule 16).
- The existence of legislation that is no longer of practical use has come to light in the course of mainstream departmental work and the Deregulation Bill provides the

Government with an appropriate legislative vehicle to repeal this legislation and rationalise the statute book.

- I look forward to assisting the Committee with its scrutiny of the draft Deregulation Bill on 6 November when we give evidence and to receiving the Committee's subsequent report in due course.

The Rt Hon. Kenneth Clarke QC MP, 11 November 2013

At the evidence session on 6 November, you asked me to consider the evidence of Lord Norton and others relating to the order-making power in clause 51 to disapply legislation that is no longer of practical use. You also asked for examples of the potential use of clause 49(1)(b) (power to spell out dates described in legislation).

I have considered the evidence presented to and by the Committee on the power in clause 51. Whilst I remain strongly of the belief that the power is both modest and appropriate, I recognise that further reassurances are required to address some of the concerns that have been expressed. In response, therefore, I would be content to consider amending the drafting of clause 51 in the following ways if it would provide the reassurances that the Committee and others seek:

1. Setting out on the face of the Bill limitations on the exercise of the power
2. Removing the reference to 'if the Minister considers' from clause 51(1)

I hope that the Committee will accept that if a suitable definition of 'no longer of practical use' is set out on the face of the Bill (as in option one, above), that the perceived need for increased levels of scrutiny would no longer apply.

In addition, I recognise that members of the Committee had concerns that the reference to ministerial determination of 'no longer of practical use' could lead to an abuse of the intended purpose of the power. I am therefore content to remove the reference to the Minister in this instance if it would alleviate this concern.

I note also that concern was expressed over reference to the consent of Scottish Ministers as opposed to the Scottish Parliament in the exercise of this power. Consultation with the devolved administrations is continuing and we will consider the appropriate level of consent in light of that engagement.

Finally, you asked for examples of the potential use of clause 49(1)(b). I hope that the following two examples are suitably illustrative:

Example 1:

Before

Section 4(7) of the Holocaust (Return of Cultural Objects) Act 2009 says:

"This Act expires at the end of the period of 10 years beginning with the day on which it is passed.

After

Clause 49(1)(b) of the Deregulation Bill could amend the provision to say:

“This Act expires at the end of the period of 10 years beginning with 12 November 2009 (the day on which this Act was passed).”

Example 2:

Before

Section 73(1) of the Charities Act 2006:

“The Minister must, before the end of the period of five years beginning with the day on which this Act is passed, appoint a person to review generally the operation of this Act.”

After

Clause 49(1)(b) of the Deregulation Bill could amend the provision to say:

“The Minister must, before the end of the period of five years beginning with the 8 November 2006 (the day on which this Act was passed), appoint a person to review generally the operation of this Act.”

In my view, this simple change is a great step forward in providing clarity for the reader of legislation. Acts of Parliament often contain numerous references to commencement dates and other related events. These references are of little use to the reader unless they are familiar with the date on which that event occurred. If they are not, further research is required before they can understand when certain provisions come into force or related events occur. The proposed power will be of great assistance to users of legislation in that the information can now be clearly presented in the text of the Act.

Appendix 7: List of abbreviations

ADEPT	Association of Directors of Environment, Economy, Planning and Transport
AELP	Association of Employment and Learning Providers
AM	Member of the National Assembly for Wales
ASCL	Association of School and College Leaders
ATL	Association of Teachers and Lecturers
BCC	British Chamber of Commerce
BECTU	Broadcasting Entertainment Cinematograph and Theatre Union
BIS	Department for Business, Innovation and Skills
BOATs	Byways Open to All Traffic
CBI	Confederation of British Industry
CLA	Country Land and Business Association
CO	Cabinet Office
DCC	Devon County Council
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, Media and Sport
DECC	Department for Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DfE	Department for Education
DfT	Department for Transport
DMMO	Definitive Map Modification Orders
DPRRC	Delegated Powers and Regulatory Reform Committee
ECHR	European Convention on Human Rights
EDF	Equality and Diversity Forum
EHRC	Equality and Human Rights Commission
EPA	Environmental Protection Act 1990
FISSS	Federation for Industry Sector Skills and Standards
FSB	Federation of Small Businesses
GEO	Government Equalities Office
GLEAM	Green Lanes Environmental Action Group
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HSA	Home school agreement
HSE	Health and Safety Executive
IA	Impact Assessment
ICAEW	Institute of Chartered Accountants in England and Wales
ICAS	Institute of Chartered Accounts of Scotland
ILPA	Immigration Law Practitioners Association
IoD	Institute of Directors
IOSH	Institution of Occupational Safety and Health
LARA	Motoring Organisation's Land Access and Recreation Association
LGA	Local Government Association

LRO	Legislative Reform Order
MoJ	Ministry of Justice
MP	Member of (UK) Parliament
NAHT	National Association of Head Teachers
NAT	National Aids Trust
NECC	North East Chamber of Commerce
NGA	National Governors' Association
NASUWT	National Association of Schoolmasters Union of Women Teachers
NFU	National Farmers Union
NPE	National Parks England
NUJ	National Union of Journalists
OCR	(The awarding body for) Oxford Cambridge and RSA Examinations
Ofsted	Office for Standards in Education
PDGLA	Peak District Green Lanes Alliance
PCS	Public and Commercial Services Union
RMT	National Union of Rail, Maritime and Transport Workers
RoSPA	Royal Society for the Prevention of Accidents
RSPB	Royal Society for the Protection of Birds
RTC	Red Tape Challenge
RTRA 1984	Road Traffic Regulation Act 1984
SASE	Specification of Apprenticeship Standards for England
SLR	Statute Law Repeal
SLR Bill	Statute Law Repeal Bill
SWG	Stakeholder Working Group
TUC	Trades Union Congress
UCRs	Unclassified County Roads
UKELA	UK Environmental Law Association

Appendix 8: Supplementary evidence from the Cabinet Office—Type of consultation taken for measures contained with the Bill

Note to Joint Committee on the Draft Deregulation Bill - follow up on Officials Evidence session on 16 October 2013				
Type of consultation taken for measures contained within Draft Deregulation Bill				
Clause	Heading	Department	Formal Consultation *	Informal Consultation
1	<i>Health and safety at work: general duty of self-employed persons</i>	HSE	Y	
2	<i>Removal of employment tribunals' power to make wider recommendations</i>	GEO	Y	
3	<i>English Apprenticeships: Simplification</i>	BIS	Y	
4	<i>Driving Instructors</i>	DfT	N	Y
5	<i>Motor Insurers</i>	DfT	Y, as part of RTC	
6	<i>Shippers etc of gas</i>	DECC	Y, as part of RTC	
7	<i>Suppliers of fuel and fireplaces</i>	DEFRA	Y, as part of RTC	
8	<i>Sellers of knitting yarn</i>	BIS	Y, as part of RTC	
9	<i>Authorisation of insolvency practitioners</i>	BIS/IS	N	Y
10	<i>Auditors ceasing to hold office</i>	BIS/IS	Y, as part of RTC	

11	<i>Insolvency and company law: miscellaneous</i>	BIS/IS	N	Y
12	<i>Recorded right of way: Additional protection</i>	DEFRA	Y, as part of RTC	
13	<i>Unrecorded rights of way: Protection from extinguishment</i>	DEFRA	Y, as part of RTC	
14	<i>Conversion of public rights of way to private rights of way</i>	DEFRA	Y, as part of RTC	
15	<i>Applications by owners etc for public path orders</i>	DEFRA	Y, as part of RTC	
16	<i>Extension of powers to authorise erection of stiles at request of owner</i>	DEFRA	Y, as part of RTC	
17	<i>Applications for certain orders under Highways Act 1980: cost recovery</i>	DEFRA	Y, as part of RTC	
18	<i>Ascertainment of public rights of way: procedure</i>	DEFRA	Y, as part of RTC	
19	<i>Erection of public statues (London): removal of consent requirement</i>	DCMS	N	N
20	<i>Reduction of qualifying period for right to buy</i>	DCLG	N	Y
21	<i>Removal of power to require preparation of housing strategies</i>	DCLG	N	Y
22	<i>Removal of restrictions on provision of passenger rail services</i>	DfT	Y	
23	<i>Reduction of burdens relating to the use of roads and railways</i>	DfT	Y, as part of RTC	See schedule 8 for details on individual measures

24	<i>Reduction of burdens relating to enforcement of transport legislation</i>	DfT	Y, as part of RTC	See schedule 9 for details on individual measures
25	<i>Removal of duty to order re-hearing of marine accident investigations</i>	DfT	N	Y
26	<i>Repeal of power to make provision for blocking injunctions</i>	DCMS	N	N
27	<i>Reduction of duties relating to energy and climate change</i>	DECC	Y, as part of RTC	
28	<i>Model clauses in petroleum licences: procedural simplification</i>	DECC	N	Y
29	<i>Household waste: de-criminalisation</i>	DEFRA	Y	
30	<i>Other measures relating to animals, food and the environment</i>	DEFRA	Y, as part of RTC	
31	<i>Abolition of office of Chief Executive of Skills Funding</i>	BIS	N	Y
32	<i>Further and higher education sectors: reduction of burdens</i>	BIS	N	Y
33	<i>Schools: reduction of burdens [annual targets]</i>	DfE	N	Y
34	<i>Exhibition of films in community premises</i>	DCMS	Y, as part of RTC	
35	<i>Repeal of Senior President of Tribunals' duty to report on decision-making standards</i>	MoJ	N	Y
36	<i>Criminal procedure: written witness statements</i>	MoJ	N	Y
37	<i>Criminal procedure: written guilty pleas</i>	MoJ	N	Y
38	<i>Criminal procedure: powers to make Criminal Procedure Rules</i>	MoJ	N	Y
39	<i>MAPPAs arrangements to cease to apply to certain offenders</i>	MoJ	N	Y

40	<i>Repeal of powers to provide accommodation to persons temporarily admitted to the UK etc</i>	HO	N	Y
41	<i>Removal of restriction on persons who may manage child trust funds</i>	HMRC	N	Y
42	<i>London street trading appeals: removal of role of Secretary of State in appeals</i>	BIS	Y	
43	<i>Gangmasters (Licensing) Act 2004: enforcement</i>	DEFRA	Y, as part of RTC	
44	<i>Repeal of duty to prepare sustainable community strategy</i>	DCLG	N	Y
45	<i>Repeal of duties relating to local area agreements</i>	DCLG	N	Y
46	<i>Repeal of provisions relating to multi-area agreements</i>	DCLG	N	Y
47	<i>Repeal of duties relating to consultation or involvement</i>	DCLG	N	Y
48	<i>Ambulatory references to international shipping instruments</i>	DfT	N	Y
49	<i>Power to spell out dates described in legislation</i>	CO	N	N
50	<i>Legislation no longer of practical use</i>	CO	N	Y
51	<i>Orders displaying legislation no longer of practical use</i>	CO	N	Y
52	<i>Devolution</i>	CO	N	Y
53	<i>Procedure: introductory</i>	CO	N	Y
54	<i>Procedure: consultation</i>	CO	N	Y
55	<i>Procedure: draft order and explanatory statement</i>	CO	N	Y
56	<i>Making of orders</i>	CO	N	Y
57	<i>Supplemental</i>	CO	N	Y
58	<i>Exercise of regulatory functions</i>	BIS	Y	
59	<i>Functions to which section 58 applies</i>	BIS	Y	

60	<i>Guidance on duty under section 58</i>	BIS	Y	
61	<i>Sections 58 - 60: Interpretation</i>	BIS	Y	
62	<i>Consequential amendments, repeals and revocations</i>	CO	N	N
63	<i>Extent</i>	CO	N	N
64	<i>Commencement</i>	CO	N	N
65	<i>Short Title</i>	CO	N	N
Schedule 1	<i>Approved English schemes</i>	BIS	Y	
Schedule 2	<i>Driving Instructors</i>	DfT	N	Y
Schedule 3	<i>Motor insurance industry: certificates of insurance</i>	DfT	Y, as part of RTC	
Schedule 4	<i>Auditors ceasing to hold office</i>	BIS	Y, as part of RTC	
Schedule 5 Pt 1	<i>Deeds of Arrangement</i>	BIS/IS	N	Y
Schedule 5 Pt 2	<i>Administration of Companies</i>	BIS/IS	N	Y
Schedule 5 Pt 3	<i>Winding up of Companies</i>	BIS/IS	N	Y
Schedule 5 Pt 4	<i>Disqualification of unfit directors of insolvent companies</i>	BIS/IS	N	Y
Schedule 5 Pt 5	<i>Bankruptcy</i>	BIS/IS	N	Y
Schedule 5 Pt 6	<i>Authorisation of insolvency practitioners</i>	BIS/IS	N	Y
Schedule 5 Pt 7	<i>Liabilities of Administrators and Administrative Receivers of Companies and Preferential Debts of Companies and Individuals</i>	BIS	N	Y

Schedule 5 Pt 8	<i>Requirements of company law</i>	BIS	N	N
Schedule 6	<i>Ascertainment of rights of way</i>	Defra	Y, as part of RTC	
Schedule 7	<i>Provision of Passenger Rail Services</i>	DfT	Y	
Schedule 8 Pt 1	<i>Permit Schemes: Removal of Secretary of State approval</i>	DfT	Y, as part of RTC	
Schedule 8 Pt 2	<i>Road Humps</i>	DfT	Y, as part of RTC	Y
Schedule 8 Pt 3	<i>Pedestrian crossings: removal of requirement to inform Secretary of State</i>	DfT	N	Y
Schedule 8 Pt 4	<i>Off-road motoring events</i>	DfT	N	Y
Schedule 8 Pt 5	<i>Testing of Vehicles</i>	DfT	Y	
Schedule 8 Pt 6	<i>Rail Vehicle Accessibility Regulations: Exemption Orders</i>	DfT	Y	
Schedule 9 Pt 1	<i>Drink and drug driving offences</i>	DfT	Y	
Schedule 9 Pt 2	<i>Bus Lane Contraventions</i>	DfT	Y, as part of RTC	
Schedule 10	<i>Household Waste: London</i>		Y, as part of RTC	
Schedule 11 Pt 1	<i>Grey Squirrels (Prohibition of Importation and Keeping) Order 1937 (S.I. 1937/478)</i>	DEFRA	Y, as part of RTC	
Schedule 11 Pt 2	<i>Farriers</i>	DEFRA	Y, as part of RTC	
Schedule 11 Pt 3	<i>Joint Waste Authorities</i>	DEFRA	Y, as part of RTC	

Schedule 11 Pt 4	<i>Removal of duty to conduct further air quality assessments</i>	DEFRA	Y, as part of RTC	
Schedule 11 Pt 5	<i>Noise Abatement Zones</i>	DEFRA	Y, as part of RTC	
Schedule 12	<i>Abolition of office of the Chief Executive of Skills Funding</i>	BIS	N	Y
Schedule 13	<i>Further and higher education: reduction of burdens</i>	BIS	N	Y
Schedule 14	<i>Responsibility for discipline</i>	DfE	N	Y
Schedule 14	<i>Home-school agreements</i>	DfE	N	Y
Schedule 14	<i>Determining school terms</i>	DfE	N	Y
Schedule 14	<i>Staffing matters</i>	DfE	N	Y
Schedule 14	<i>Publication of reports</i>	DfE	N	Y
Schedule 15	<i>Removal of consultation requirements</i>	DCLG and DEFRA	N	Y
Schedule 16 Pt 1	<i>Companies</i>	BIS	N	N
Schedule 16 Pt 2	<i>Newspaper Libel and Registration Act 1881 (c 60)</i>	BIS	N	Y
Schedule 16 Pt 2	<i>Industry Act 1972 (c. 63)</i>	BIS	N	N
Schedule 16 Pt 2	<i>Aircraft and Shipbuilding Industries Act 1977 (c. 3)</i>	BIS	N	Y
Schedule 16 Pt 2	<i>British Steel Act 1988 (c 35)</i>	BIS	N	N
Schedule 16 Pt 2	<i>European Communities (Definition of Treaties) (International Railway Tariffs Agreements) Order 1980 (S.I. 1980/1094)</i>	DfT	N	Y

Schedule 16 Pt 3	<i>Energy Act 1976 (c 76)</i>	DECC	Y, as part of RTC	
Schedule 16 Pt 3	<i>Electricity and Gas (Energy Efficiency Obligations) Orders</i>	DECC	Y, as part of RTC	
Schedule 16 Pt 4	<i>Road Traffic Act 1988 (c. 52)</i>	DfT	N	Y
Schedule 16 Pt 5	<i>Farm and Garden Chemicals Act 1967 (c. 50)</i>	DEFRA	Y, as part of RTC	
Schedule 16 Pt 5	<i>Statutory Water Companies Act 1991</i>	DEFRA	Y, as part of RTC	
Schedule 16 Pt 5	<i>Sea Fish (Conservation) Act 1992 (c. 60)</i>	DEFRA	Y, as part of RTC	
Schedule 16 Pt 6	<i>Agricultural Produce (Grading and Marking) Acts 1928 and 1931</i>	DEFRA	Y, as part of RTC	
Schedule 16 Pt 6	<i>Animal Health Act 1981 (c. 22)</i>	DEFRA	Y, as part of RTC	
Schedule 16 Pt 6	<i>Milk (Cessation of Production) Act 1985 (c. 4)</i>	DEFRA	Y, as part of RTC	
Schedule 16 Pt 6	<i>Coal and Other Mines (Horses) Order (S.I. 1956/1777)</i>	DECC	Y, as part of RTC	
Schedule 16 Pt 7	Greenwich Hospital School (Regulations) (Amendment) Order 1948	DfE	N	Y
Schedule 16 Pt 8	Town Police Clauses Act 1847 (10 & 11 Vict. (c. 89))	HO	N	Y

* The Government's Consultation Principles can be found at <https://www.gov.uk/government/publications/consultation-principles-guidance>

Appendix 9: Formal Minutes

Wednesday 11 December 2013

Members present:

Lord Rooker, in the Chair

Baroness Andrews	Andrew Bridgen MP
Lord Mawson	James Duddridge MP
Lord Naseby	John Hemming MP
Lord Selkirk of Douglas	Kelvin Hopkins MP
Lord Sharkey	Ian Lavery MP
	Priti Patel MP

1. Draft Deregulation Bill

The Committee considered this matter.

2. Written evidence

Ordered, That written evidence relating to the Draft Deregulation Bill submitted by Jane Lacey be reported to both Houses for publication on the Internet.

3. Consideration of the Chair's draft Report

Draft Report (*Draft Deregulation Bill*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 33 read and agreed to.

Paragraph 34.

Amendment proposed, in line 11, to leave out from 'habit' to the end of the paragraph.—(*Lord Naseby*.)

Question put, That the Amendment be made.

The Committee divided.

<i>Content</i> , 5	<i>Not Content</i> , 6
Lord Naseby	Baroness Andrews
Lord Selkirk of Douglas	Lord Rooker
James Duddridge	Lord Sharkey
Priti Patel	John Hemming
Andrew Bridgen	Kelvin Hopkins
	Ian Lavery

Question negative.

Paragraphs 35 to 115 read and agreed to.

Paragraph 116.

Amendment proposed, in line 5, to leave out from ‘introduced’ to the end of the paragraph.—(*James Duddridge.*)

Question put, That the Amendment be made.

The Committee divided.

<i>Content, 5</i>	<i>Not Content, 6</i>
Lord Naseby	Baroness Andrews
Lord Selkirk of Douglas	Lord Rooker
James Duddridge	Lord Sharkey
Priti Patel	John Hemming
Andrew Bridgen	Kelvin Hopkins
	Ian Lavery

Question negatived.

Paragraphs 117 and 118 read and agreed to.

Paragraph 119 read, as follows: “We remain unclear about the Government’s reasons for proposing a duty on regulators to have regard to ‘economic growth’ rather than to ‘sustainable growth’. We recommend that the Government set out their case more clearly in their response to this Report.”

Motion made, to leave out paragraph 119 and insert the following new paragraph: We welcome the Government’s reasons for proposing a duty on regulators to have regard in broad terms to ‘economic growth’—(*Andrew Bridgen.*)

Question put, That the new paragraph be read a second time.

The Committee divided.

<i>Content, 6</i>	<i>Not Content, 5</i>
Lord Naseby	Baroness Andrews
Lord Rooker	Lord Sharkey
Lord Selkirk of Douglas	John Hemming
James Duddridge	Kelvin Hopkins
Priti Patel	Ian Lavery
Andrew Bridgen	

Paragraph 119 disagreed to and new paragraph inserted.

Paragraphs 120 to 237 read and agreed to.

Summary agreed to.

Appendices to the Report agreed to.

Resolved, That the Report, as amended, be the Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Lords and Kelvin Hopkins make the Report to the House of Commons.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134 of the House of Commons.