HOUSE OF LORDS

Delegated Powers & Regulatory Reform Committee

9th Report of Session 2006–07

International Tribunals (Sierra Leone) Bill [HL]

Life Peerages (Residency for Taxation Purposes) Bill [HL]

Pensions Bill

Vehicle Registration Marks Bill

Government amendments:

Forced Marriage (Civil Protection) Bill [HL]

Legal Services Bill [HL]

Correspondence with the Leader of the House

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session with the terms of reference “to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate level of parliamentary scrutiny; to report on documents and draft orders laid before Parliament under the Regulatory Reform Act 2001; and to perform, in respect of such documents and orders and subordinate provisions orders laid under that Act, the functions performed in respect of other instruments by the Joint Committee on Statutory Instruments”.

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Any query about the Committee or its work should be directed to the Clerk of the Delegated Powers and Regulatory Reform Committee, Delegated Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020-7219 3103 and the fax number is 020-7219 2571. The Committee’s email address is dprr@parliament.uk.

Historical note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. Following the passage of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act and the Committee became the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 expanded the order-making power to include regulatory reform and the Committee, renamed the Delegated Powers and Regulatory Reform Committee, took on the scrutiny of regulatory reform proposals under that Act. The Committee will scrutinise regulatory reform orders under the successor to the 2001 Act, the Legislative and Regulatory Reform Act 2006.
Ninth Report

INTERNATIONAL TRIBUNALS (SIERRA LEONE) BILL [HL]

1. This bill enables provision to be made in relation to the Special Court of Sierra Leone which is similar to that made in relation to the International Criminal Court by sections 42 to 48 of the International Criminal Court Act 2001. The Foreign and Commonwealth Office have provided a memorandum on the single power, that to make an Order in Council, printed at Appendix 1. The power is specific and the principle can be debated as the bill progresses, so there is nothing in the bill to which we wish to draw the attention of the House.

LIFE PEERAGES (RESIDENCY FOR TAXATION PURPOSES) BILL [HL]

2. This bill does not delegate legislative power.

PENSIONS BILL

Introduction

3. This bill deals with State Pensions (Part 1), Occupational and Personal Pension Schemes (Part 2) and the Personal Accounts Delivery Authority (Part 3). A memorandum from the Department for Work and Pensions about the delegated powers in the bill is printed at Appendix 2.

Contribution credits for parents and carers — clause 3

4. Clause 3 inserts a new section, section 23A, into the Social Security Contributions and Benefits Act 1992 (“SSCBA”). Those who may benefit from the contribution credits provided for in the new section are specified in subsection (3), but the meaning of “engaged in caring” and of “foster parent” are (generally) left to regulations subject to negative procedure. This is consistent with the general approach for the current home responsibilities protection and with the tax credit scheme under the Tax Credits Act 2002. There is an exception for the first regulations about “engaged in caring”, which are subject to affirmative procedure. This is by no means inappropriate, especially as the position for contribution credits generally is dealt with by regulations subject to negative procedure (under section 22(5) SSCBA).

Up-rating of basic state pension — clause 5(4)

5. Clause 5 inserts a new section 150A into the Social Security Administration Act 1992 to have effect from “the designated tax year” which the Secretary of
State may designate by order. The order is analogous to a commencement order and so is not subject to a parliamentary procedure.

**Removal of lower earnings limit/basic pension link — clauses 7 and 8**

6. Section 5 of SSCBA provides that for primary Class 1 contributions there is a lower earnings limit, a primary threshold and an upper earnings limit (these terms are explained at paragraphs 11 to 13 of the Explanatory Notes). The amounts are set out in regulations by the Treasury subject to negative procedure. Section 5(2) provides that the amount set for the lower earnings limit shall be equal to, or not more than 99p less than, the weekly rate of basic pension in a Category A retirement pension. That weekly rate must at present be reviewed each year under section 150(1) of the Social Security Administration Act 1992 ("SSAA") by reference to prices and must be uprated by the Secretary of State in line with prices, by order subject to affirmative procedure.

7. Subsection (2) of section 5 is repealed by clause 7, so giving the Treasury discretion as to what the lower earnings limit shall be (see paragraph 162 of the Explanatory Notes) and removing the duty to uprate it. **The power to fix and to alter the lower earnings limit is significant because it feeds into entitlement. Although we are aware that some similar powers (such as that to fix the primary threshold) are subject to the negative procedure, we consider that this power gives the Government such a degree of discretion as to merit the affirmative procedure.**

8. **We make the same recommendation about the power in clause 8, which makes equivalent provision for Northern Ireland.** (Clause 7 deals only with Great Britain.)

**Additional pension: upper accrual point — clause 12**

9. Paragraphs 58 and 59 of the Explanatory Notes set out the current method of calculating second state pension, and paragraphs 60 to 63 outline the changes to be made by the bill. The bill aims for an entirely flat rate accrual of second state pension, but for a time after the flat rate is introduced the additional earnings-related component (accruing at 10% for the purposes of the calculation described in paragraph 58 of the Explanatory Notes) will continue to apply for those with earnings between the low earnings threshold and the upper earnings limit. This arrangement will continue until the low earnings threshold (which is uprated annually in line with earnings) equals or exceeds the "upper accrual point" (which is fixed by reference to what was the upper earnings limit when the flat rate scheme begins). This is expected to be in about 2030.

10. New subsection (8) of section 122 of SSCBA enables the Secretary of State, by order subject to affirmative procedure made before the year in which the flat rate scheme is introduced, to direct that the upper accrual point shall, instead of being the upper earnings limit, be some other amount. **This is a significant power, for its exercise will have the effect of altering the time of convergence with the lower earnings limit. Paragraph 232 of the Explanatory Notes explains that the power is there in case the forecast earnings growth is such that convergence before 2030 may not take place. Although the bill itself is not limited in this way, we consider that the affirmative procedure should provide a sufficient safeguard against inappropriate use of the power.**
11. There is also a duty in clause 12(6) for the Secretary of State to make an order on convergence abolishing the low earnings threshold and the upper accrual point. (This order is subject to affirmative procedure, and accordingly the duty is subject to approval of the draft by Parliament.) The order may make consequential, incidental and supplemental provision, which may include amending Acts, whenever passed. The Committee expects a case for a power to amend future Acts always to be fully made. In this instance, the power is focussed and, since it is expected that the power will not be used until 2030, it is almost inevitable that there will be Acts to be passed after this bill but before the order is made which will need modification on abolition of the limits. In the circumstances, we do not thus consider the amendment of future Acts to be inappropriate.

Conversion of guaranteed minimum pensions — clause 14

12. Clause 14 is explained at paragraphs 261 to 265 of the Explanatory Notes, and paragraph 264 in particular sets out the new sections inserted into the Pension Schemes Act 1993 (“the 1993 Act”).

13. One of the conditions to be met if a scheme is to be relieved of liability to pay guaranteed minimum pensions is Condition 4 in new section 24B(5). That condition is that the converted scheme provides survivors’ benefits in accordance with section 24D “in such circumstances, and during such periods, as are prescribed by regulations”. The regulations are subject to negative procedure. Section 24D provides for a minimum pension for a survivor of half the pension to which the earner would have been entitled by reference to employment between 1978 and 1997 (widows) or between 1988 and 1997 (widowers and civil partners).

14. The memorandum refers to the intention to use the power to duplicate certain conditions. This may be a reference to section 17 of the 1993 Act which sets out a number of conditions on the face of the Act itself, with a power to make regulations subject to negative procedure confined to widowers, civil partners and lump sums. The memorandum does not however restrict the power to the duplication of existing conditions and does not justify the choice of negative procedure. We consider that, unless the Minister can justify the negative procedure to the House, this power should be subject to the affirmative procedure.

Abolition of contracting-out for defined contribution schemes — clause 15

15. Clause 15(1) abolishes contracting-out certificates for money purchase contracted-out schemes and appropriate scheme certificates under the 1993 Act. The current position is explained at paragraphs 73 to 77 of the Explanatory Notes. Contracting-out will still be possible for schemes that are not money purchase schemes.

16. There is a power at clause 15(2), which is not limited to clause 15(1). This is an affirmative power to amend, not only to repeal, any of sections 26 to 33A of the 1993 Act or any other provisions of the 1993 Act which relate to protected rights.

17. Protected rights are those elements of a person’s rights under a scheme that derive from what is known as the “contracted-out rebate” (see paragraph 73 of the Explanatory Notes) and the investment return on that rebate. There
are specific rules about protected rights, in particular as to investment and transfer, and there is a requirement for the purchase of an annuity when the rights are secured. The significant elements of these rules are set out in primary legislation, in sections 26 to 33A of the 1993 Act. We believe they are intended as safeguards to ensure that money which goes into a private pension scheme that would otherwise have gone into the National Insurance Fund is used appropriately. No doubt that is why they are in primary legislation.

18. In their memorandum, the Government have not made an adequate case for the power to amend these sections. Their position is apparently that they cannot decide their policy until a review is received later this year (paragraph 77 of the memorandum). This justifies the absence of provision about protected rights in the bill, but does not justify why the power to amend or repeal these sections should be left to delegated legislation. Had the Government been certain of their policy, we would have expected to have seen the provision on the face of the bill. The uncertainty as to the policy calls for a significantly greater justification of the delegation than the memorandum has provided. Unless the Minister can provide such a justification to the House, we consider that provision on this subject should be made by future primary legislation rather than by delegated legislation.

Financial assistance scheme — clause 18

19. There is a Henry VIII power at clause 18(9) to alter the fraction used in calculating the amount of a member's initial payment. The regulations are subject to affirmative procedure and the power relates to matters which are largely left to regulations by the Pensions Act 2004; for these reasons we do not consider the power to be inappropriate.

VEHICLE REGISTRATION MARKS BILL

20. This private member’s bill brought from the Commons is about the transfer of registration marks. The background and the purpose of the bill are explained in the Explanatory Notes. Currently, section 26 of the Vehicle Excise and Registration Act 1994 enables the Secretary of State, by regulations subject to negative procedure, to grant a right to the registered keeper to retain a vehicle’s registration mark separately from the vehicle. The bill extends the power by enabling the regulations to grant a right to someone else, if the registered keeper so requests. There is nothing in the bill to which we wish to draw the attention of the House.

FORCED MARRIAGE (CIVIL PROTECTION) BILL [HL] — GOVERNMENT AMENDMENTS FOR COMMITTEE STAGE

21. We reported on this private member’s bill in our 3rd Report (HL Paper 19) and have now been invited to consider Government amendments to be moved in Committee, printed on HL Bill 3(a). The amendments rewrite the
bill, drawing on existing family and domestic violence legislation. The
Department for Constitutional Affairs has provided a supplementary
memorandum on the delegated powers in the amendments, printed at
Appendix 3. The memorandum explains and makes the case for each
dellegation, and the procedure which each attracts, and there is nothing in the
amendments to which we wish to draw the attention of the House.

LEGAL SERVICES BILL [HL] — GOVERNMENT AMENDMENTS
FOR REPORT

22. We reported on this bill in our 3rd Report (HL Paper 19) and have now been
invited to consider Government amendments to be moved on Report: as
amendments No. 250, 316, 402, 403, 633 and 648 on the marshalled list,
HL Bill 50–II, and amendments to Schedules 16 and 17 printed on sheet (b)
of amendments supplementary to the second marshalled list (i.e. HL Bill 50-
II(b)). The Department for Constitutional Affairs has provided three
supplementary memoranda about the delegations in these amendments,
printed at Appendix 4. There is nothing in the amendments to which we
wish to draw the attention of the House.

GOVERNMENT AMENDMENTS: CORRESPONDENCE WITH THE
LEADER OF THE HOUSE

23. We have recently corresponded with the Leader of the House about the
timely submission of supplementary memoranda on Government
amendments with a significant delegated powers aspect. The correspondence
is printed at Appendix 5.
APPENDIX 1: INTERNATIONAL TRIBUNALS (SIERRA LEONE) BILL [HL]

Memorandum by the Foreign and Commonwealth Office

1. This Memorandum concerns the International Tribunals (Sierra Leone) Bill which confers a single delegated power.

2. The Bill enables Her Majesty by Order in Council to apply to the Special Court for Sierra Leone certain provisions of the International Criminal Court Act 2001, so as to permit the enforcement in England and Wales of sentences imposed by the Special Court.

3. This power has been left to delegated legislation, since the exercise of the power will be dependent upon the successful conclusion of a sentence enforcement agreement between the Special Court and the Government of the United Kingdom. Thus, no proposal for an Order will be made unless and until such an agreement has been reached. Although no particular difficulty is envisaged with the conclusion of such an agreement, the Government does not propose to conclude it until Parliament has given the necessary powers.

4. The power in the new section 77A(4) of the 2001 Act allows provision to be made which corresponds to sections 42 to 48 of the 2001 Act “with any necessary modifications”. The modifications in this case (if any) are likely only to be minor.

5. Orders in Council under this provision will be laid before Parliament after being made. There are three reasons for this. First, this follows the precedent of Orders under section 1 of the United Nations Act 1946, which confers the power to be used under section 77(4) of the 2001 Act in relation to international tribunals established by United Nations Security Council Resolution. Second, it is envisaged that an agreement will be entered into shortly after Royal Assent of this Bill, so Parliament will have only recently been able to give its view on the issue and action will probably have to be taken speedily. And third, the provisions of any Order will be very short, simply applying the relevant provisions of the 2001 Act to the Special Court, with only minor modifications (if any).

April 2007
APPENDIX 2: PENSIONS BILL

Memorandum by the Department for Work and Pensions

Introduction

1. This memorandum is provided by the Department for Work and Pensions (DWP) in respect of the Pensions Bill.

2. This memorandum identifies the delegated powers conferred by the Pensions Bill. It explains the purpose of the powers; the reasons for using delegated legislation; whether the powers are subject to Parliamentary scrutiny and which procedures apply; and the justification for the procedures.

3. The Department has followed the precedent in pensions legislation by setting out the overall legislative framework on the face of the Bill but giving the Department the power to amend the detailed rules without having to take up a substantial amount of Parliamentary time amending the primary legislation.

4. Where possible, drafts of appropriate regulations will be available for examination during the Bill’s passage through the House of Lords although this may not be feasible in cases where it will not be necessary for the regulations to take effect until some time after Royal Assent. The power in clause 12(6)(b) will only be exercised if certain conditions are satisfied in the future.

5. The Social Security Advisory Committee must also scrutinise all proposals to make State Pensions regulations and look at drafts of those regulations once the enabling powers have been in force for at least 6 months.

6. The Department proposes to commence the provisions relating to uprating of the standard minimum guarantee in State Pension Credit in line with earnings on Royal Assent. Early commencement of these powers is needed to ensure that the provisions of the Bill apply to the review of the level of benefits which the Secretary of State will conduct in October 2007 (for implementation from April 2008). The Department also proposes to commence the provisions relating to initial payments from the Financial Assistance Scheme on Royal Assent. This is to ensure that initial payments can be assessed at the higher level as quickly as possible. In both cases, the Law Officers have given their consent to early commencement.

Henry VIII Powers

7. There are three areas where Henry VIII powers are being sought. In each of these cases, the scope of these powers will be tightly defined and the affirmative procedure used. The clauses with Henry VIII powers are listed here in paras 8 to 12 below.

8. [Clause 12] In connection with the withdrawal of earnings-related State Second Pension by 2030 a gradual approach is required. The intention is to withdraw earnings relation by eroding pension accruals between the low earnings threshold, which is earnings uprated, and a frozen upper accrual point. Achieving this by the target of 2030 depends on the start date of the erosion and the rate of growth of earnings in the economy. Given uncertainties about timescales and economic growth rates, the Department is seeking delegated powers to ensure all necessary consequential and other amendments are made at the date the low earnings threshold actually meets the upper accrual point, rather than the target date.

9. Clause 15 provides a power to amend, repeal or revoke any protected rights provisions in the Pension Schemes Act 1993 or in subordinate legislation made
under that Act. This power is provided in connection with the abolition of contracting out for defined contribution pension schemes and personal pension schemes. Protected rights are accrued pension rights which derive from the contracting out rebate. The contracting out rebate takes the form of reduced rate National Insurance Contributions and/or age-related payments made by HMRC to a contracted-out pension scheme.

10. The Government did not include provisions in the Bill simplifying the rules on protected rights because it wanted to ensure that the final decision on how to deal with protected rights was informed by the outcome of the joint Treasury/DWP review of the working of the “Open Market Option” arrangements for the purchase of annuities, which is expected to reach its conclusions at the end of the year.

11. [Clause 15] also includes a power to ensure that the Department is able to deal satisfactorily with transitional issues which arise as a result of the abolition of contracting out for defined contribution schemes. Clause 15 contains a power to make such consequential, incidental or supplemental provision, and such transitional or transitory or saving provision, as the Secretary of State thinks necessary or expedient in connection with, or in consequence of, the provisions of this clause or Schedule 4.

12. [Clause 22] In connection with any future winding up of the personal accounts delivery authority, a power will be taken to repeal (by then) redundant provisions of this Bill which provide for the establishment and constitution of the Authority.

Structure of the Bill

13. The Bill itself contains 30 clauses and 7 Schedules and is structured as follows:
   - Part 1 deals with State Pension reforms
   - Part 2 deals with occupational and personal pension schemes
   - Part 3 deals with the personal accounts delivery authority
   - Part 4 contains general provisions

Part 1 – State Pension Reforms

Clause 1 – Category A and B retirement pensions: single contribution condition

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Negative resolution

14. Clause 1 inserts a new paragraph 5A into Schedule 3 to the Social Security Contributions and Benefits Act 1992 (SSCBA) to provide for a single contribution condition for entitlement to a Category A and B basic State Pension:
   - in the case of Category A basic State Pension, for people who reach State Pension age on or after 6 April 2010; and
   - in the case of Category B basic State Pension, for people who are either married to or in a civil partnership with someone who reaches State Pension age on or after 6 April 2010; or to the surviving spouse or civil partner of someone who died on or after 6 April 2010 and did not reach pensionable age before that date.
Purpose of power

15. Sub-paragraph (4) of the new paragraph 5A allows regulations to enable contributions paid or credited under the now repealed National Insurance Acts of 1946 and 1965 in respect of periods before 6th April 1975, to be taken into account for the purposes of that condition. This mirrors the power at paragraph 13 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c.6) which does the same in respect of the existing contribution conditions at paragraph 5 of Schedule 3 to the SSCBA.

Schedule 1

\textit{Powers conferred on: Secretary of State}

\textit{Powers exercised by: Regulations (statutory instrument)}

\textit{Parliamentary procedure: Negative resolution}

16. Part 1 of Schedule 1 makes consequential amendments due to the single contribution condition. Paragraph 5 inserts new section 60A into the SSCBA.

Purpose of power

17. Subsection (2) of that section includes a regulation making power to allow a person who does not satisfy the new single contribution condition at paragraph 5A of Schedule 3 SSCBA, to be awarded a prescribed proportion of basic State Pension related to the number of qualifying years achieved by the contributor concerned. Introducing a power to prescribe the calculation for pro-rating entitlement follows the convention that applies to the current scheme (section 60 SSCBA).

Clause 3 – Contributions credits for relevant parents and carers

18. Clause 3 inserts new section 23A into the SSCBA. This section will allow parents and carers attaining State Pension age from 6 April 2010 to qualify for new contributions credits instead of qualifying for Home Responsibilities Protection as now. The credits will help to provide entitlement to basic State Pension, Widowed Parent’s Allowance and Bereavement Allowance. There are three powers conferred on the Secretary of State to make regulations by this clause:

- Section 23A(3)(c) – affirmative resolution procedure on first use
- Section 23A(4) – negative resolution procedure
- Section 23A(9) – negative resolution procedure

Purpose of power in section 23A(3)(c)

\textit{Powers conferred on: Secretary of State}

\textit{Powers exercised by: Regulations (statutory instrument)}

\textit{Parliamentary procedure: Affirmative on first use}

19. Section 23A(3)(c) will allow regulations to define when a person is “engaged in caring” as a relevant carer.
20. The intention is to define “engaged in caring” as someone who is caring (relevant carer) for at least 20 hours a week for one or more individuals (the caree(s)) who is/are in receipt of the following benefits:

- attendance allowance; or
- the care component of a disability living allowance at the highest or middle rate prescribed in accordance with section 72 SSCBA (the care component); or
- constant attendance allowance.

21. Regulations under this power will allow a person to be treated as “engaged in caring” for a limited period in certain circumstances where the conditions described above are not satisfied – for example, if the caree enters respite care, or dies, or if the relevant carer falls ill or needs a break.

22. The power will also allow us to deem those carers who are receiving Income Support as “engaged in caring” for these purposes.

23. The power will allow us to deem a parent to be “engaged in caring” in circumstances where their partner, who is awarded a contribution credit by virtue of section 23A(3)(a), does not need the credit(s) because he/she already has an earnings factor equal to the lower earnings limit for that year (the benefit entry point).

24. Taking a power of this nature will enable the Department to add to and update the list of people who may be engaged in caring following any future review of the circumstances in which caring may be needed – including recognising those carers who are certified by a health or social care professional as caring for at least 20 hours a week. This will enable the changing nature of care over time and the needs of an ageing population to be reflected in the regulations.

25. **Affirmative resolution on first use** – as the carer’s credit is new, affirmative resolution procedures will allow Parliament to debate the regulations on first use. Thereafter any changes would be subject to the negative resolution procedure.

**Purpose of power in section 23A(4)**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (statutory instrument)*

*Parliamentary procedure: Negative resolution*

26. Section 23A(4) will allow regulations to prescribe that those “engaged in caring” under section 23A(3)(b) or (c), with the exception of those carers who are receiving Income Support, must make an application satisfying prescribed requirements and provide prescribed information in order to be awarded a Class 3 contribution credit.
Purpose of power in section 23A(9)

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Negative resolution

27. The definition of ‘foster parent’ in section 23A(9) will allow regulations to define that term. The intention is to mirror the definition in regulation 1(2) of the Social Security (Home Responsibilities) Regulations 1994 (SI 1994/704).

Clause 5 – Up-rating of basic pension etc. and standard minimum guarantee by reference to earnings


Purpose of power at clause 5, subsection (1)

Powers conferred on: Secretary of State

Powers exercised by: Order (statutory instrument)

Parliamentary procedure: Affirmative resolution

29. Subsection (2) of new section 150A gives the Secretary of State the power to lay the draft of an order to up-rate the basic State Pension, widow’s/widower’s pensions in Industrial Death Benefit and the State Pension Credit standard minimum guarantee in line with earnings. The draft order will be subject to the affirmative resolution procedure. If it is approved, subsection (6) of new section 150A will place a duty on the Secretary of State to make the order in the form of the draft. These powers broadly mirror the existing powers at section 150(2)(a) and (9) of the SSAA (though these are concerned with up-rating in line with prices) which will continue to apply in relation to up-rating other sums.

Purpose of power at clause 5, subsection (4)

Powers conferred on: Secretary of State

Powers exercised by: Order (statutory instrument)

Parliamentary procedure: No parliamentary procedure

30. Subsection (4) of clause 5 gives the Secretary of State a power to make an order designating a tax year in which the first review of the amount of the basic State Pension and widow’s/widower’s pensions in Industrial Death Benefit by reference to earnings is to be carried out. There is no parliamentary procedure attaching to an order made under subsection (4) of clause 5.
Purpose of power in paragraph 21 of Part 5 of Schedule 1.

Powers conferred on: Secretary of State

Powers exercised by: Order (statutory instrument)

Parliamentary procedure: Affirmative resolution

31. Subsection (2) of clause 5 introduces Part 5 of Schedule 1 which contains consequential and related amendments due to the introduction of earnings up-rating.

32. Paragraph 21 of the Schedule inserts new subsection (1A) into section 152 of the SSAA which enables the Secretary of State, if he is satisfied that a mistake has occurred in the preparation of a previous order up-rating the amounts of the basic State Pension, widow's/widower's pensions in Industrial Death Benefit and the State Pension Credit standard minimum guarantee, to vary any of those amounts by making a further order. This builds on the existing power to rectify mistakes in orders, which is set out in section 152(1) of the SSAA. The order will be subject to the affirmative resolution procedure.

Clause 6 – Preservation of link with prices in case of other benefits

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Negative resolution

33. Sections 39 and 39C of the SSCBA directly link the rates of Widow’s Pension, Widowed Mother’s Allowance, Widowed Parent’s Allowance and Bereavement Allowance to the rate of the basic State Pension. As these are pre-retirement benefits, they will continue to be up-rated by prices. The rate of these benefits therefore needs to be separated from the rate of the basic State Pension and set out elsewhere when pensions begin to be up-rated by earnings.

34. Subsection (5) of clause 6 amends section 39 of the SSCBA to enable a separate rate for Widow’s Pension and Widowed Mother’s Allowance to be prescribed. Subsection (6) of clause 6 amends section 39C of the SSCBA to enable a separate rate for Widowed Parent’s Allowance to be prescribed. Subsection (6) of clause 6 also links the rate of Bereavement Allowance to the basic rate of Widowed Parent’s Allowance. The purpose of these provisions is to ensure that Widowed Mother’s Allowance, Widow’s Pension, Widowed Parent’s Allowance and Bereavement Allowance can continue to be uprated by prices. Subsections (1) to (3) of clause 6 amend section 150 of the SSAA to ensure the rates prescribed in the regulations for Widowed Mother’s Allowance, Widowed Parent’s Allowance and Widow’s Pension will be reviewed annually and uprated by reference to prices as they are now.

Purpose of powers

35. These powers allow for the establishment of a separate rate of benefit for widow’s and bereavement benefits so that these can be uprated by prices when the basic State Pension begins to be up-rated by earnings.
36. Under subsections (7) and (9) of clause 6, the power to make regulations must be exercised in such a way as to ensure that the rates are the same as the rate of the basic State Pension in the last year before pensions start to be uprated by earnings.

Clause 7 – Removal of link between lower earnings limit and basic pension

37. This clause amends the existing delegated power contained in section 5 of the SSCBA.

*Powers conferred on:* Treasury

*Powers exercised by:* Regulations (statutory instrument)

*Parliamentary procedure:* Negative resolution

38. The lower earnings limit (LEL) is the point at which employees start to build up entitlement to contributory working age and pension benefits. The amount of the LEL is linked to the weekly rate of the basic State Pension. Because of this link, the amount of the LEL currently increases in line with prices.

39. A consequence of earnings up-rating of the basic State Pension is that the LEL would also increase in line with earnings. Clause 7 amends section 5 of the SSCBA so that, where regulations prescribe the amount of the LEL, this amount will no longer be linked to the weekly rate of the basic State Pension. The Treasury will, in future, have discretion to specify the amount of the LEL without having regard to the weekly rate of the basic State Pension. This will provide the Treasury with the appropriate flexibility to set the amount of the LEL.

**Purpose of power**

40. The power enables the Treasury to have flexibility in setting the LEL, avoiding the possibility that the LEL automatically goes up by earnings by breaking the link with the basic State Pension.

Clause 8 - Removal of link between lower earnings limit and basic pension: Northern Ireland

41. This clause amends the existing delegated power contained in section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

*Powers conferred on:* Treasury

*Powers exercised by:* Regulations (statutory instrument)

*Parliamentary procedure:* Negative resolution

42. Clause 8 makes the same amendments to section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as clause 7 makes to section 5 of the SSCBA. The comments that are made in relation to that clause therefore apply equally in the case of clause 8.
Clause 9 – Deemed earnings factors for purposes of additional pension

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Negative resolution

43. Clause 9 inserts new sections 44B and 44C into the SSCBA.

44. The low earnings threshold is the point at which employed earners accrue entitlement to State Second Pension (additional pension).

45. This clause will increase the number of people who are deemed to be earning at the low earnings threshold and therefore accruing State Second Pension (additional pension) as if they had Band 1 earnings (earnings between the lower earnings limit and the low earnings threshold) until the proposed new simplified State Second Pension is introduced (clauses 10-12).

46. These changes would mean that, for each tax year starting with that commencing

47. 6 April 2010, the following people will accrue State Second Pension (under the deeming provision) if they have aggregate earnings equal to the qualifying earnings factor in any tax year:

- employed earners with earnings below the lower earnings limit in any given tax year;
- relevant carers1 who have no earnings or earnings below the annual lower earnings limit;
- those entitled to Carer’s Allowance;
- disabled people who are entitled to Severe Disablement and Incapacity Benefit Allowance.

48. The clause will allow carers and disabled people to be credited with earnings factors that may be combined with employed earnings in any one tax year to bring those individuals up to the qualifying earnings factor, but no higher. As stated above, the clause allows for these people to be deemed to be earning at the low earnings threshold for State Second Pension accrual purposes.

Purpose of power

49. The power at section 44C (3)(e) will allow regulations to prescribe that earnings factor credits may be awarded in other cases.

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1 It should be noted that the relevant carers identified here would also receive the new weekly credits for parents and carers in basic State Pension (clause 3) as a result of the Government’s proposal to replace Home Responsibilities Protection for those reaching State Pension age from April 2010. This does not alter arrangements for those awarded Carer’s Allowance.
Clause 11 – Additional pension: simplified accrual rates as from flat rate introduction year

Powers conferred on: Secretary of State

Powers exercised by: Order and regulations (statutory instrument)

Parliamentary procedure: Negative resolution (except in relation to clause 11(4) below which is by order not subject to parliamentary procedure)

50. Clause 11 and Schedule 2 amend both the SSCBA and the SSAA to make provision for simplifying accrual rates for the State Second Pension. In particular, new Schedule 4B to the SSCBA provides that there shall be a flat-rate accrual amount and an earnings-related accrual amount.

51. Subsection (3) of new section 148AA of the SSAA (inserted by paragraph 2 of Schedule 2) provides that, where the Secretary of State determines that there has been an increase in the general level of earnings during the review period, he must make an order that there is to be a new flat-rate accrual amount (see subsection (4)).

52. Clause 11(4) amends section 122 of the SSCBA to insert a definition of “the flat-rate introduction year”. This will allow the Secretary of State to designate, by order, a starting tax year for the calculation of State Second Pension by reference to the flat-rate accrual amount. This is in line with the position when the first appointed year for State Second Pension was set.

53. Part 7 of Schedule 1 sets out consequential amendments due to the simplified accrual rates for State Second Pension. Paragraph 37 amends section 41 of the Pension Schemes Act 1993 which determines the amount payable by way of National Insurance contributions on the range of earnings over which the rebate is to be applied. The amendment replaces the reference in that section to the upper earnings limit with a reference to the upper accrual point (UAP) from the flat rate introduction year.

54. By virtue of new section 41(1ZA)(b) the power in section 41(1) of that Act will allow the Secretary of State, by regulations, to determine how the amount of National Insurance contributions is to be calculated on the range of earnings between the lower earnings limit and the new upper accrual point (see in relation to clause 12 below) where a person has an unusual earnings pattern i.e. they are paid otherwise than on a weekly basis. The new provisions replicate the existing regulation making power conferred on the Treasury in section 5(4) of the SSCBA; that section prescribing the method of calculation for earnings up to the upper earnings limit.

55. Paragraph 11 of new Schedule 4B to the SSCBA (inserted by Schedule 2) replicates the power at paragraph 9 of Schedule 4A to that Act. This will enable the Secretary of State to make regulations in cases not covered by the remainder of the Schedule. In the main, these will be cases where the person’s circumstances change in the course of the year, for example, if he moves between contracted-in and contracted-out employment or between different categories of contracted-out employment. It also allows regulations to be made in such other cases as the Secretary of State sees fit.

56. This power will also be used to prescribe how the provisions regarding the Contribution Equivalent Premium and the restoration of state scheme rights operate and interact with the remainder of Schedule 4B. This deals with those who are
contracted back into the state scheme because their contracted-out employment terminates after less than two years. The current regulations made under paragraph 9 of Schedule 4A are The Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regs 2001 (S.I.2001 No.1323) and it is envisaged that an equivalent set will be made under the new power.

Clause 12 – Additional pension: upper accrual point

*Powers conferred on:* Secretary of State

*Powers exercised by:* Order (statutory instrument)

*Parliamentary procedure:* Affirmative resolution

57. Clause 12 amends sections 22, 44, 122 of, and Schedule 4 to, the SSCBA, and makes some free-standing provisions in order to replace the upper earnings limit (UEL) currently used as the earnings ‘cap’ for calculating accruals of State Second Pension with a new ‘upper accrual point’.

58. Clause 12(3)(b) inserts new section 122(7) to (9) of the SSCBA. Section 122(7) defines the UAP by setting it an amount equal to the UEL multiplied by 52 (so as to provide an annual value). However, section 122(8) would allow the Secretary of State to vary this introductory amount by an order made before the beginning of the relevant year.

59. Clauses 12(6) to (10) are ‘sunset’ provisions. In other words, they provide for the abolition of both the low earnings threshold and the UAP when the value of the former becomes at least equal to that of the latter.

60. In the tax year in which the value of the low earnings threshold is equal to, or greater than, the value of the UAP, clause 12(6) requires the Secretary of State to make an order abolishing both of these limits at the beginning of the following tax year. Clause 12(7) would allow that order to make (a) consequential, incidental or supplemental provision, and (b) transitional, transitory or savings provision, as the Secretary of State thinks necessary or expedient in connection with, or in consequence of, the abolition of the low earnings threshold and the upper accrual point.

61. Clause 12(8) would allow any such order to amend, repeal or revoke any enactment (whenever passed or made).

Purpose of powers

62. The power in new section 122(8) SSCBA will be used to fix the UAP in subsequent years at such a level so that the earnings related element of the reformed State Second Pension will ultimately disappear in around 2030 when the low earnings threshold – the lower point for the calculation of earnings related State Second Pension – merges with the UAP.

63. This will achieve the overall intention of State Second Pension becoming completely ‘flat rate’ in around 2030. However, the formulation for achieving this is in part predicated on the upper accrual point being introduced in 2012. As the introduction of the UAP is to occur at the same time as the commencement of earnings up-rating of basic State Pension – the starting date for which has not been tied irrevocably to 2012 – flexibility through use of secondary legislation is preferable so that the precise amount of the UAP can be set at a level that will best help to meet the 2030 flat-rating target.
Henry VIII power

64. With regard to the powers at clause 12 (7) – (8), as described above, the intention is for the low earnings threshold and upper accrual point to be abolished around 2030. The date of introduction of the ‘accelerated flat-rating’ mechanism for State Second Pension is tied to the commencement of earnings up-rating of basic State Pension – a date for which will not be announced until the start of the next Parliament. In any event it will take a period in excess of 15 years for flat-rating to occur, during which time there could well be legislation passed that may have a direct or indirect bearing on the process. In addition, the projection for achieving the abolition of the LET and the UAP depends on the growth of average earnings in the economy as the earnings uprated low earnings threshold gradually converges on the UAP. Given the timescales and uncertainties involved (for example, differences in forecasts of earnings growth and actual growth and the lack of certainty about the timing of the merging of these thresholds) there is cause to take broad delegated powers.

65. The power in clause 12(6)(b) will only be used once the UAP and the low earnings threshold have merged (see clause 12(5)). As these limits appear in primary legislation, it is necessary to take the additional powers in clause 12(7) and (8) for the abolishing order to make all necessary consequential and other amendments to primary legislation.

Clause 13 - Increase in pensionable age for men and women

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Negative resolution

66. Part 1 of Schedule 4 to the Pensions Act 1995 currently specifies when men and women become eligible for the State Pension. Clause 13 introduces Schedule 3 which amends Schedule 4 to that Act to provide for State Pension age to increase gradually from 65 to 68 from April 2024. This clause and Schedule do not themselves contain any delegated powers.

67. Consequential amendments due to increase in pensionable age for men and women

[Schedule 1, Part 8] Paragraph 41(2) amends section 75 of the SSCBA which contains a power to make regulations specifying the circumstances in which a person may continue to receive Disability Living Allowance beyond the designated age (currently 65). The amendment substitutes pensionable age for age 65 with effect from 6 April 2024 but does not otherwise alter the scope of the regulation-making power.

68. It is considered appropriate to continue to use delegated powers to prescribe the circumstances in which people over State Pension age can claim or continue to receive Disability Living Allowance.

69. Regulations made under section 75 of the SSCBA are made subject to the negative resolution procedure. This delivers a flexible system that can then respond effectively to changes in the future. Primary legislation would not provide the degree of flexibility to adapt the entitlement conditions or the application of the age conditions promptly in the future if necessary.
Part 2 – Occupational and Personal Pension Schemes

Clause 14 – Conversion of guaranteed minimum pensions

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Negative resolution

70. This clause allows the trustees of defined benefit contracted-out occupational pension schemes to convert guaranteed minimum pensions (GMP) into ordinary scheme benefits which are of at least equal actuarial value. It will also permit conversion of an individual’s GMP on the point of transfer of benefits to another scheme, provided the individual consents.

Purpose of power

71. Clause 14(3) inserts a new section – 24B(5) - into the Pension Schemes Act 1993 which allows regulations to prescribe the circumstances and periods during which a survivor’s benefit must be paid. At present survivors can inherit a proportion of scheme members’ GMPs, but schemes do not have to pay this if certain conditions are met, for instance the survivor is not in receipt of a relevant state benefit (e.g. bereavement payments or retirement pension). We intend to duplicate these conditions for the converted benefits.

72. Clause 14(3) also inserts a new section 24C into the Pension Schemes Act 1993 which allows regulations to specify how a scheme will meet the actuarial equivalence requirement.

73. Clause 14(3) also inserts a new section - 24F(1) - into the Pension Schemes Act 1993. This allows regulations to restrict when converted GMP benefits can be transferred to another scheme or to allow transfers provided certain conditions are met.

Clause 15 – Abolition of contracting-out for defined contribution pension schemes

74. Clause 15 and Schedule 4 deal with the abolition of contracting out for defined contribution pension schemes and personal pension schemes. From the date of abolition, contracting out for money purchase schemes will cease. Money purchase schemes that were formerly contracted out will no longer receive the contracting out rebate (which takes the form of reduced rate National Insurance Contributions and/or age-related payments to the pension scheme). From the date of abolition, members of formerly contracted out schemes will be brought fully into the State second pension scheme. Two powers are conferred on the Secretary of State to make regulations by this clause; the first power is conferred by clause 15(2) and the second power by clause 15(6).
Purpose of power in clause 15(2)

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Affirmative resolution (where used to amend or repeal primary legislation, otherwise negative resolution.)

Henry VIII power

75. Clause 15(2) provides a power to amend, repeal or revoke any protected rights provisions in the Pension Schemes Act 1993 or in subordinate legislation made under that Act. Protected rights are accrued pension rights which derive from the contracting out rebate. These rights are subject to certain rules such as where funds can be invested. Members who are married or in a civil partnership must use their protected rights to choose pension or annuity provision which will provide benefits to a surviving spouse or civil partner.

76. Abolishing the rules relating to protected rights is being considered because there is a widespread view (evidenced by consultation DWP carried out in autumn 2006), that the rules are too complex and that their removal would result in simplification for schemes and members and administrative savings.

77. The Government did not include provisions in the Bill simplifying the rules on protected rights because it wanted to ensure that the final decision on how to deal with protected rights was informed by the outcome of the joint Treasury/DWP review of the working of the “Open Market Option” arrangements for the purchase of annuities, which is expected to reach its conclusions at the end of the year. The review will seek to ensure that people make informed choices about their annuity type and fully understand the consequences of their choice, including the purchase of annuities that make provision for survivors. Decisions on the use of the power will be taken in the light of the findings of this review.

Purpose of power in clause 15(6)

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Affirmative resolution (where used to amend or repeal primary legislation, otherwise negative resolution.)

Henry VIII power

78. Clause 15(6) provides a power to make such consequential, incidental or supplemental provision and such transitional or transitory or saving provision as the Secretary of State thinks necessary or expedient in connection with, or in consequence of, the provisions of this clause or Schedule 4.

79. The power has been included to ensure that the DWP is able to deal satisfactorily with transitional issues which arise as a result of the abolition of contracting out for defined contribution schemes.

80. The power may be used to amend or repeal any provision of primary or secondary legislation whenever passed.
81. Schedule 4 includes a paragraph which inserts a new provision into the Pension Schemes Act 1993 to prescribe requirements in relation to former contracted-out defined contribution schemes. This power ensures that obligations in respect of former contracted-out schemes, which are currently contained in regulations made under section 9(3) PSA 1993, will continue to apply despite the repeal of section 9(3) of the Pension Schemes Act 1993.

Clause 18 – Financial Assistance Scheme: increased levels of payments

82. Section 286(1) of the Pensions Act 2004 (the 2004 Act) confers on the Secretary of State the power to make provision, by regulations, for a scheme for making payments (the Financial Assistance Scheme, or “FAS”) to qualifying members of qualifying schemes. Section 316 of the Act requires any regulations relating to the FAS to be laid before and approved by Parliament.

83. In deciding whether subordinate legislation was the appropriate vehicle for delivering the latest extension of FAS-related provisions, DWP has been guided by our previous approaches and the following criteria:

84. the desirability of not putting detailed technical provisions on the face of the Bill whilst signalling the Government’s commitment to providing an increase in the minimum level of assistance; and

85. the need to ensure a higher level of assistance is available as soon as possible to the majority of current recipients whilst retaining flexibility in responding to changing circumstances as more information on affected schemes and members becomes available and findings from the recently announced asset review emerge.

86. Subsection (2) of the new clause inserts subsection (1A) into section 286 of the 2004 Act, and requires the Secretary of State to make provision using existing regulation making powers contained in s.286, to set the level of financial assistance payments (known as annual payments), at no less than 80% of members’ expected pensions (as that term is defined in regulations), subject to any cap provided for in regulations and taking account of any assets allocated to members by their scheme. The amendment also provides that that level of assistance will be received by all qualifying members, regardless of their age. The regulations brought forward by the Secretary of State will, therefore, remove current payment tapers linked to a qualifying member’s proximity to their normal retirement age as of the 14th May 2004. These changes will come into force once the necessary regulations have received Parliamentary approval.

87. Subsection(2) also inserts section 286(1B), which allows the Secretary of State to apply “relevant restrictions”, which are in the form of a cap (prescribed in regulations) to the amount of annual payment made to qualifying members, or a specified level of a qualifying member’s actual pension, above which assistance will not be paid.

Powers conferred on: Secretary of State

Powers exercised by: Regulations (statutory instrument)

Parliamentary procedure: Affirmative

88. An increase to the level of initial payments, which are paid to a member in anticipation and on account of annual payments while the member’s scheme is still winding up, is included on the face of the Act. This change will take effect from the date of Royal Assent, and does not require regulations.
89. However, Subsection (9) will allow for subsequent changes to the rate of initial payments to be delivered through regulations that will be subject to affirmative procedures (subsection 10).

*Powers conferred on:* Secretary of State

*Powers exercised by:* Regulations (statutory instrument)

*Parliamentary procedure:* affirmative resolution

Part 3 – Personal Accounts Delivery Authority

Clause 21 – Winding up of the Authority

*Powers conferred on:* Secretary of State

*Powers exercised by:* Order (statutory instrument)

*Parliamentary procedure:* Affirmative resolution

90. Clause 21 provides for the winding up of the delivery authority on abandonment or modification of proposals relating to personal accounts.

91. Subsection (1) gives the Secretary of State the power to provide, by order, for the dissolution of the Personal Accounts Delivery Authority (the ‘Authority’) if he deems that the condition in subsection (3) is met, namely, due to the abandonment or modification of any proposals relating to personal accounts it is no longer necessary for the Authority to exist.

92. Subsection (2) imposes an obligation on the Secretary of State, if he deems the condition in subsection (3) to have been met at any time after 2008, that he *must* provide for the dissolution of the Authority.

Henry VIII power

93. Subsection (7) contains a Henry VIII power which allows an order made under this clause to contain provision repealing any provision of clauses 18, 19, 20 and Schedule 6.

Purpose of powers

94. It is the Government’s current intention to extend the remit of the Authority in a planned future Bill, subject to the will of Parliament. However, if proposals about personal accounts are modified or abandoned, the Secretary of State may consider it no longer necessary or appropriate for the Authority to exist. It is not anticipated that this will be the case but it is prudent to ensure that, should something unexpected happen, the Authority will not exist indefinitely.

95. The power to dissolve the Authority has therefore been left to delegated legislation so that the option is left open should circumstances change sufficiently that it becomes necessary by virtue of the condition in subsection (3) being met.

96. The purpose of subsection (1) is to be able to dissolve the Authority at any time before the end of 2008 if the Secretary of State deems the condition in subsection (3) to have been met.
97. The purpose of subsection (2) is to ensure the Authority in its current format is a time-limited body as the Secretary of State is obliged to dissolve the Authority after 2008 if subsection (3) is met.

98. In the event of the dissolution of the Authority, clauses 18, 19, 20 and Schedule 6 would become redundant. The purpose of subsection (7), a Henry VIII power, is to ensure that these clauses do not remain on the statute book if they are no longer required.

99. The affirmative procedure has been used, allowing both Houses of Parliament to scrutinise the order. As the dissolution of the Authority will necessarily involve the transfer of rights and liabilities of the Authority to third parties, and any order providing for this may also include provision for the repeal of redundant clauses, it is right that the order made is subject to the scrutiny of both Houses of Parliament.

April 2007
APPENDIX 3: FORCED MARRIAGE (CIVIL PROTECTION) BILL [HL] —
GOVERNMENT AMENDMENTS FOR COMMITTEE STAGE

Memorandum by the Department for Constitutional Affairs

1. This memorandum sets out the delegated powers conferred by Government amendments to the Forced Marriage (Civil Protection) Bill. It explains in each case the purpose of the power; the reason why it is left to delegated legislation; and the nature and justification for the parliamentary procedures that apply.

2. The Bill as amended will primarily make amendments to the Family Law Act 1996 (FLA), which is the key piece of legislation on domestic violence, inserting a new part (Part 4A) into the Act. This part will consist of 19 new sections.

Clause by Clause Commentary

Clause 1:
Section 63C(7)

Powers conferred on: Lord Chancellor

Powers exercised by: Order

Parliamentary procedure: Negative procedure

3. A relevant third party specified by the Lord Chancellor under this power will be able to apply to court for a forced marriage protection order under section 63C(2)(b). Other third parties will require the permission of the court to make applications for orders under section 63C(3).

4. Allowing a third party to apply for a forced marriage protection order on behalf of a victim may be helpful in situations where the victim is unable to do so, for example, because they are too intimidated or scared to take such action themselves or because they are physically unable to leave their home. Voluntary groups and other organisations working with victims of forced marriages have indicated that the third party provision would be a useful tool to help women in these types of situations. Including a requirement for third parties, other than what in practice will be organisations skilled and experienced in this field (see below), to seek leave to apply will help to ensure that this provision is not open to abuse.

5. The new section also gives the Secretary of State power to specify a list of “relevant third parties”, who will be able to make applications for forced marriage protection orders without having to seek the leave of the court. This will help the courts to process applications from such organisations quickly and effectively. It is envisaged that this list could include organisations such as the Forced Marriage Unit (FMU) in the Foreign and Commonwealth Office (although it would require a significant increase in resources to meet this new function), as well as other voluntary organisations with experience supporting those faced with forced marriage. Providing for this list in secondary legislation, rather than on the face of the Bill, provides the necessary level of flexibility for the list to be updated without the need for primary legislation. This will enable the list to be modified as necessary, if, for example, an existing body or organisation were to change its name. It will also mean that new organisations working with victims of forced marriage can be added to the list as appropriate.
6. The negative procedure provides the appropriate level of parliamentary scrutiny.

Section 63M(3)

*Powers conferred on:* The Lord Chancellor

*Powers exercise by:* Order

*Parliamentary procedure:* Negative procedure

7. This provision applies the order making powers in section 57 of the Family Law Act 1996 to Part 4A proceedings. Section 57 provides the Lord Chancellor, after consulting with the Lord Chief Justice, with order making powers allowing him to specify levels of court (or a specified class of court or a particular court) at which proceedings may be commenced or to which they may be transferred. By virtue of section 65(3) of the Family Law Act 1996, the section 57 power is subject to negative resolution.

8. Section 63M(3) limits these powers to county courts and the High Court.

9. It is appropriate to exercise this power by order and for such a power to be subject to the negative procedure, to correspond with the nature of the power under section 57 of the 1996 Act.

Section 63N

*Powers conferred on:* The Lord Chancellor

*Powers exercised by:* Order


10. County courts and the High Court will initially deal with proceedings under Part 4A. The power in section 63N allows the Lord Chancellor, after consulting with the Lord Chief Justice, to extend the jurisdiction under Part 4A to magistrates’ courts. The aim of the Bill is to make it easier for women threatened with forced marriage to apply to the civil courts to get the protection they need. The possibility of extending jurisdiction to the magistrates’ courts would support this aim by making it possible for women threatened with forced marriage to get the protection they need in a wider range of local and accessible courts. Providing the power for jurisdiction to be extended to the magistrates’ courts by secondary legislation will provide important flexibility as to the timing of any future extensions. The intention is to consider enabling magistrates’ courts to deal with proceedings under Part 4A, once a body of case law has developed that will assist them in dealing with such cases effectively.

11. The context for the power is set by section 63N(2)(a), which allows the Lord Chancellor to make any provision in relation to magistrates’ courts corresponding to provision made in relation to magistrates’ courts by or under Part 4 of the 1996 Act. The extent of the power is set by section 63(2)(b) which enables any incidental, supplemental, consequential, transitional, transitory or saving provision to be made.

12. Section 63N(3) means that a free-standing provision or an amendment to an existing enactment (for example, Part 4 of the Family Law Act 1996) could be made under this power.
13. The affirmative power is appropriate since, if it needed to be exercised, it would involve amending primary legislation.


Section 63P

*Powers conferred on: The Lord Chancellor*

*Powers exercised by: Order*

*Parliamentary procedure: Negative procedure*

15. This power corresponds to the power in section 61(5), (6) and (7) of the Family Law Act 1996. This is subject to negative resolution by virtue of section 65(3) of the 1996 Act.

16. The power enables the Lord Chancellor, after consulting the Lord Chief Justice, to set out the circumstances in which appeals may be made against decisions to transfer, or proposed transfer, of proceedings.

17. It is appropriate for this level of detail to be set out in an order and for the negative procedure to be applied as in section 61 of the 1996 Act. This will provide the flexibility to amend and update the list of circumstances for appeal in the light of experience.

Section 63Q

*Powers conferred on: The Secretary of State*

*Powers exercised by: Not applicable*

*Parliamentary procedure: None*

18. This provision enables the Secretary of State to prepare and publish guidance regarding the effect of the new provisions or other matters relating to forced marriage. A person exercising public functions must have regard to the guidance in the exercise of those functions.

19. Currently, the FMU publishes guidance to public authorities and other bodies on dealing with cases with forced marriage. This guidance is, however, non-statutory. The power included in the Bill will enable existing guidance to be given a statutory home, as well as enabling new guidance to be placed on a statutory footing. This will help to promote awareness amongst public authorities of the sensitivities involved in forced marriages cases and to develop best practice.

20. A person exercising public functions will be required to have regard to any guidance when exercising their functions, but it will not be binding. Accordingly it is not considered that any form of Parliamentary scrutiny is required.
Clause 3

Powers conferred on: the Lord Chancellor

Powers exercised by: Order

Parliamentary procedure: Affirmative procedure (if amendment or repeal of an Act, otherwise negative procedure)

21. This power allows the Lord Chancellor to make such supplementary, incidental or consequential provision as he considers appropriate for the purposes of section 1 or in consequence of that section in an order. This power will enable the Lord Chancellor to make any further consequential amendments that may be required to make sure that the Bill functions effectively. This power is effectively a safeguard against any omission or oversight.

22. Section 63(5) provides that this power may be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment.

23. The affirmative procedure is appropriate as the power is widely drawn and enables amendment to primary provisions. The power also enables such amendments to be made to secondary legislation. This power is appropriate, as it is likely that, if amendments to primary provisions have been overlooked, additional amendments to secondary legislation will also be required. The negative procedure will apply in such circumstances, which provides an appropriate level of parliamentary scrutiny for amendments to secondary legislation.

Powers conferred on: The Department of Finance and Personnel

Powers exercised by: Order

Procedure: Affirmative (if amending or repealing any provision of an Act or Northern Ireland legislation - otherwise negative resolution)

24. This power allows the Department of Finance and Personnel to make corresponding consequential amendments necessary to enable the legislation to work effectively in Northern Ireland.

25. As above, the affirmative power is appropriate as the power is widely drawn and enables amendment to primary provisions.

Clause 4(2)

Powers conferred on: the Lord Chancellor

Powers exercised by: Order

Parliamentary procedure: None

26. This power is a commencement power. It is necessary to have such a power and no parliamentary scrutiny is required.
Clause 4 (4)

Powers conferred on: Department of Finance and Personnel

Powers exercised by: Order

Procedure: commencement order

27. 26. This power is a commencement power for the Northern Ireland provisions. It is necessary to have this power and no scrutiny is required.

Schedule 1 paragraph 3(7)

Powers conferred on: Department of Finance and Personnel

Powers exercised by: Order

Procedure: Negative resolution

28. A relevant third party specified by the Department of Finance and Personnel under this power will be able to apply to court for a forced marriage protection order under paragraph 3 (2)(b). Other third parties will require the permission of the court to make applications for orders under paragraph 3(3).

29. Allowing a third party to apply for a forced marriage protection order on behalf of a victim may be helpful in situations where the victim is unable to do so, for example because they are too intimidated to take such action themselves or because they are physically unable to leave their home. Including a requirement for third parties to seek leave to apply will help to ensure that this provision is not open to abuse.

30. The schedule also gives the Department of Finance and Personnel the power to specify a list of “relevant third parties”, who will be able to make applications for forced marriage protection orders in Northern Ireland without having to seek the leave of the court. This will help the courts to process applications from such organisations quickly and effectively. Providing for this list in secondary legislation, rather than on the face of the Bill, provides the necessary level of flexibility for the list to be updated as circumstances require.

31. The negative resolution procedure provides the appropriate level of scrutiny.

Schedule 1 paragraph 9 (3) and (4)

Powers conferred on: The Lord Chancellor

Powers exercised by: Order

Procedure: Negative resolution

32. This paragraph applies the order making powers in Article 34 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998. Article 34 provides the Lord Chancellor after consulting with the Lord Chief Justice with order making powers to specify the levels of court (or a specified class of court or a particular court) at which proceedings may be commenced or transferred to.

33. Paragraph 9(4) limits these powers to county courts and the High Court.
34. It is appropriate to exercise this power by order and for such a power to be subject to negative resolution.

**Schedule 1 paragraph 10 (1)**

*Powers conferred on: The Lord Chancellor*

*Powers exercised by: Order*

*Procedure: Affirmative procedure*

35. County courts and the High Court will initially deal with proceedings for forced marriage. In the long term, the intention is to enable magistrates’ courts to deal with the proceedings if considered appropriate once a body of case law has developed.

36. The power in paragraph 10(1) allows the Lord Chancellor, after consulting with the Lord Chief Justice, to extend the jurisdiction under Schedule 1 to magistrates’ courts.

37. Paragraph 10(2) allows a power to make any provision in relation to magistrates’ courts which corresponds to provision made in relation to such courts by or under the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

38. Paragraph 10(3) provides that a free-standing amendment or an amendment to an existing enactment could be made under this power.

39. This power is appropriate if jurisdiction were to be extended to magistrates’ courts as a number of amendments to primary legislation would be required to extend the jurisdiction in this way.

40. As use of this power envisages amendment to primary provisions, then it is appropriate to have a greater degree of scrutiny provided by the affirmative procedure.

**Schedule 1 paragraph 13(1)**

*Powers conferred on: The Lord Chancellor*

*Powers exercised by: Order*

*Procedure: negative resolution*

41. This power enables the Lord Chancellor, after consulting with the Lord Chief Justice, to set out the circumstances in which appeals may be made against decisions to transfer, or to propose to transfer, proceedings.

42. It is appropriate for this level of detail to be set out in an order and for the negative resolution procedure to be applied in these circumstances.
Schedule 1 paragraph 14(1)

Powers conferred on: The Department of Finance and Personnel

Powers exercised by: not applicable

Procedure: none

43. This provision enables the Department of Finance and Personnel to prepare and publish guidance regarding the effect of the new provisions or other matters relating to forced marriage in Northern Ireland. A person exercising public functions to whom guidance is given must have regard to it in exercise of those functions. It is appropriate to place guidance on a statutory footing to develop good practice.

April 2007
APPENDIX 4: LEGAL SERVICES BILL [HL] — GOVERNMENT AMENDMENTS FOR REPORT

First supplementary memorandum by the Department for Constitutional Affairs

1. This memorandum is supplementary to the Government memorandum, submitted to the Delegated Powers and Regulatory Reform Committee in November 2006, which explained the purpose and procedure of the delegated powers in the Legal Services Bill. The Government memorandum can be found at Annex A (not printed).

2. The Committee’s report on the Legal Services Bill (at annex B) (not printed) was published on 14 December 2006. The Government response to the report can be found at annex C (not printed) to this supplementary memorandum.

3. This memorandum sets out the delegated powers for proposed amendments to the Legal Services Bill to be made at Lords Report. It explains in each case the purpose of the power; the reason why it is to be left to delegated legislation; and the nature and justification for the parliamentary procedures that apply. Clause numbers in the memorandum refer to the clauses in the Bill as amended in Committee on 6th March 2007.

4. The text of the relevant amendments is available at annex D [not printed].

Clause 81 – Board’s power to make licensing rules

Power conferred on: Legal Services Board

Power exercisable by: Rules

Parliamentary procedure: None

5. In paragraphs 105-106 of the previous memorandum, we stated that the Legal Services Board would be required to make licensing rules within 12 months of a date to be specified by an order of the Lord Chancellor. We have now altered this position to provide that the Board’s obligation to make licensing rules will instead be triggered only when it determines that it needs to act as a licensing authority in accordance with the limited circumstances set out in Schedule 12 to the Bill. We therefore propose to amend Clause 81(1) to remove the provision for the Lord Chancellor to specify a date by order. The clause will instead provide that the Board is required to make rules within 12 months of the date upon which a licensable body first becomes entitled to make an application to it for a licence by virtue of a decision of the Board to act as a licensing authority under the provisions of Schedule 12.

6. Schedule 12 sets out the limited circumstances in which the Board may act as a licensing authority (see paragraph 116 of previous memorandum). The Board may license bodies directly in circumstances where there is no competent licensing authority with suitable regulatory arrangements, or, in the case of non-commercial bodies, no licensing authority which is able to offer those bodies appropriate terms.

7. We are making this change to reflect the fact that we do not wish the Board to be required to make licensing rules where there is no need for it to do so, and to
reinforce the policy that the Board should not be competing with other competent licensing authorities, following concerns from professional bodies.

8. We are content that the Board’s decision to act as a licensing authority is suitable for delegation to the Board, without the need for an order by the Lord Chancellor. The function of this order-making power was to ensure certainty in specifying a date to begin the 12-month period within which the Board must make rules. However, a decision of the Board under the Schedule 12 procedure will provide a similar degree of certainty, and the Board may only act in accordance with the Schedule 12 provisions.

Clause 107 – power to modify provisions of Part 5 for foreign bodies

*Power conferred on: Lord Chancellor*

*Power exercisable by: order subject to statutory instrument*

*Parliamentary procedure: affirmative resolution*

9. Paragraphs 141-143 of the previous memorandum explained the delegated power at Clause 107, which allows the Lord Chancellor to amend or modify any of the provisions set out in Part 5 to the extent that the provisions affect bodies formed under, or recognised by, law outside the UK. The Delegated Powers Committee accepted the principle of this power, but recommended that it should be subject to the affirmative resolution procedure. The Government brought forward an amendment at Committee stage to achieve this.

10. This power is being amended to ensure that changes can be made to the provisions in Part 5 to accommodate business entities and the law of other jurisdictions outside of England & Wales (i.e. not only outside the UK). This would include, for example, the need to provide for possible differences in partnership law in Scotland.

Clause 197– Definition of ‘manager’

*Power conferred on: Lord Chancellor*

*Power exercisable by: order made by statutory instrument*

*Parliamentary procedure: affirmative resolution*

11. We intend to introduce an amendment providing a new power to enable the Lord Chancellor to modify the definition of ‘manager’ in the Legal Services Bill to ensure that the definition can remain effective for bodies that are formed under foreign law, in the event that the management structures of such bodies are not covered by the existing definitions in the Bill. This is similar to the existing power at clause 107 to modify the provisions of Part 5 in relation to foreign bodies, (see paragraphs 141-143 of previous memorandum) but a new clause is required as the definition of ‘manager’ applies to other parts of the Bill. This power ensures that the provisions of the Bill governing persons who may be managers of authorised persons (licensed bodies or other authorised entities e.g. Law Society recognised bodies) need not remain inadvertently restrictive in relation to bodies formed under foreign law. We consider that this is suitable for delegated powers, however, in accordance with the Delegated Powers Committee’s previous recommendation on Clause 107, we propose that this new power will also be subject to the affirmative resolution procedure.
Schedule 22 – Transitional power to modify the functions of future approved regulators

*Power conferred on: Lord Chancellor*

*Power exercisable by: order subject to statutory instrument*

*Parliamentary procedure: affirmative resolution*

12. This is a transitional power akin to clause 68, which has been created to cover the period before the Legal Services Board is operational. It will enable the Lord Chancellor to make orders similar to those he will be able to make under clause 68, but via a different procedure, since the Board will not yet be operational in order to make recommendations.

13. Specifically, the Lord Chancellor will be able to modify the functions and powers of bodies that will in future be classed as approved regulators, where changes are required, on the grounds set out in the new provision, to the statutory provisions applicable to these bodies. This is modelled as far as possible on Clause 68 of the Bill, (see paragraphs 83-86 of previous memorandum, and supplementary letter from the DCA) which allows the Lord Chancellor to modify the functions of approved regulators, though there are necessarily some differences in the procedure to be followed, because the Board will not yet have been established. In one respect this power is also slightly more limited in its scope than Clause 68, as it only allows for new statutory vires to regulate reserved activities where there is already a statutory procedure for assessing and granting applications, e.g. under Schedule 4 of the Courts and Legal Services Act 1990.

14. The Delegated Powers Committee accepted the principle of Clause 68, and the Schedule 22 power fulfils an equivalent function for the period between Royal Assent and the establishment of the Board. The aim is to prevent statutory regulators from being at a disadvantage during the transitional period (in comparison with non-statutory bodies) in cases where regulatory powers or functions need to be adapted (for example, to enable them to effect necessary statutory change in advance of the commencement of their regulatory powers under the Bill, or to allow them to carry out their regulatory role during the transitional period more effectively and efficiently).

28 March 2007

Second supplementary memorandum by the Department for Constitutional Affairs

1. This memorandum is further to the supplementary memorandum submitted to the Delegated Powers and Regulatory Reform Committee on 28 March 2007.

2. This memorandum sets out the delegated powers for proposed amendments to the Legal Services Bill to be made at Lords Report (Days 2 and 3). It explains in each case the purpose of the power; the reason why it is to be left to delegated legislation; and the nature and justification for the parliamentary procedures that apply. Clause numbers in the memorandum refer to the clauses in the Bill as amended in Committee on 6 March 2007.

3. The text of the relevant amendments is available at annex A [not printed].
New Clause after Clause 159 – “Power to establish jurisdiction of voluntary complaints scheme”

*Power conferred on: Lord Chancellor*

*Power exercisable by: Order*

*Parliamentary procedure: Negative resolution*

4. This power will permit the Lord Chancellor, by order following a recommendation of the Board, the OLC, or the Consumer Panel, to set the limits of a voluntary complaint scheme operated by the Office for Legal Complaints.

5. This amendment will enable the OLC to establish a voluntary scheme by rules, but only in relation to complaints, complainants, respondents and legal services of a description specified by the Lord Chancellor by order. The ability of the OLC to make voluntary scheme rules is therefore contingent on an order by the Lord Chancellor and limited to the jurisdiction set out in that order.

6. This would allow the OLC, within the limits set by the order and by rules, to deal with complaints relating to legal services provided by individuals or organisations that fall outside the compulsory jurisdiction but who wish to have complaints about the services that they provide dealt with by ombudsmen under the voluntary scheme.

7. This power is necessary because it is considered appropriate for the establishment of a voluntary scheme not to be automatic, but rather to require the consent of the Lord Chancellor based on evidence in the form of a recommendation from an interested body (the Legal Services Board, the Office for Legal Complaints, or the Consumer Panel) that the establishment of a scheme has become necessary or desirable. In making their recommendations, the interested bodies would first be required to publish them in draft and to consider any recommendations. The intention is that the scheme would be self-funding through charges made on those subject to the voluntary regulation scheme.

8. We consider the negative resolution procedure to be appropriate, since this will be a self-contained scheme that will ultimately be voluntary and established by agreement between the OLC and the voluntary members.

New Clause after Clause 159 – “Power to make rules on voluntary complaints scheme”

*Power conferred on: Office for Legal Complaints*

*Power exercisable by: Rules*

*Parliamentary procedure: None*

9. This amendment will, subject to the Lord Chancellor’s order making power, permit the OLC to make scheme rules establishing a voluntary jurisdiction scheme.

10. As with compulsory jurisdiction scheme rules, voluntary scheme rules must be made with the consent of the Board under clause 152. The reason for leaving the detail of the voluntary scheme to rules rather than on the face of the legislation is to allow the OLC to create a scheme that is flexible enough to meet the changing needs of consumers and the developing legal services market. The OLC will be best placed to...
determine the detail of how it should operate effectively and a rule-making power gives the OLC an opportunity to adapt to any changes over time in how it exercises its functions. This mechanism is based on the Financial Ombudsman Service model.

11. Because all rules must receive the consent of the Board before they can be made, there is a safeguard in place to ensure that the voluntary complaints scheme is established on a fair and reasonable basis.

Schedules 14, 16 and 17 – rules regarding funds recovered upon intervention in legal practices in cases where beneficiaries cannot be traced

*Power conferred on: Law Society, Council for Licensed Conveyancers, licensing authorities*

*Power exercisable by: Rules*

*Parliamentary procedure: None required (approval by the Board)*

12. Schedules 14, 16 and 17 of the Bill already provide the Law Society, Council for Licensed Conveyancers and licensing authorities with the power to make rules dealing with treatment of funds recovered following an intervention in the practices of authorised persons, in cases where regulator is unable to trace the beneficiaries of such funds.

13. We are amending this power to make it clear that the obligation which the Law Society, the CLC and licensing authorities have to trace the beneficiaries of sums recovered following intervention in a practice is an obligation to take such steps as are reasonable in all the circumstances of the case. The purpose of this is to clarify the extent of these regulators’ obligations in the application of these powers.

Schedule 16 – delegation of Law Society functions (s.79 of the Solicitors Act 1974)

*Power conferred on: Law Society*

*Power exercisable by: Statutory powers allowing delegation of regulatory functions*

*Parliamentary procedure: None required*

14. Section 79 of the 1974 Act confers powers on the Law Society to be able to delegate regulatory functions to committees, sub-committees or an individual. However, we are further amending this section to allow for a three-tier system of delegation and to allow sub-committees to delegate their functions to an individual, and to allow delegation from a Committee to a body corporate where appropriate. In particular, this would allow for the Solicitors Regulation Authority to establish a service company whose employees would be entirely separate from other Law Society employees.

15. We are also providing that the Council, when delegating its functions, may prevent further delegation (for example, to a sub-committee or an individual), and to allow for restrictions or conditions to be placed on a delegated function. This is consistent with existing powers that the Law Society have under section 79.

16. Together these provisions seek to ensure that the Law Society have the appropriate flexibility to separate their regulatory and representative functions. An additional safeguard is provided in that any such delegation and separation of regulatory and representative functions would need to be consistent with internal governance rules.
made by the Legal Services Board under clause 29, and where it wasn’t the Board would be able to take appropriate action.

Schedule 16 – regulations regarding the register of foreign lawyers (schedule 14 of the Courts and Legal Services Act 1990)

*Power conferred on: The Law Society*

*Power exercisable by: Regulations*

*Parliamentary procedure: None required (approval by the Board)*

17. The Law Society may currently make regulations in respect of the duration of registration under paragraph 3, schedule 14 of the 1990 Act. However, we are amending this regulation making power in order that the Law Society may make regulations which require information in the register to be made available to the public, and may specify the manner in which information is made available. This is consistent with that already proposed under the new section 28 (3C) of the Solicitors Act 1974, which provides for regulations to be made about the register of practising certificates. Such proposals are consistent with better regulation principles of transparency. The Bill provides that the Board has to approve any changes to regulatory arrangements of approved regulators, which would include any regulations made in respect of the register of foreign lawyers.

20 April 2007

Third supplementary memorandum by the Department for Constitutional Affairs

1. This memorandum is further to the supplementary memorandum submitted to the Delegated Powers and Regulatory Reform Committee on 20th April 2007.

2. This memorandum sets out the delegated powers for proposed amendments to the Legal Services Bill tabled on 1st May, to be debated at Lords Report (Day 3). It explains in each case the purpose of the power; the reason why it is to be left to delegated legislation; and the nature and justification for the parliamentary procedures that apply. Clause numbers in the memorandum refer to the clauses in the Bill as amended in Committee on 6th March 2007.

3. The text of the relevant amendments is available at annex A.

Schedule 16 other financial institutions

*Power conferred on: Law Society*

*Power exercisable by: Rules*

*Parliamentary procedure: None*

4. Under the provisions of Section 32 of the Solicitors Act 1974, the Law Society is empowered to make rules governing the handling (by solicitors) of accounts held at banks or building societies.

5. However, solicitors may choose to operate accounts in institutions other than banks and building societies, including off-shore institutions. In such cases the Law
Society has no power to make rules in respect of these other financial institutions, and consequently it has no effective means of monitoring or controlling the operation of these accounts. This is particularly significant given the need to ensure fraud /money-laundering prevention etc.

6. The purpose of this amendment is to add “other financial institutions”. This is necessary to provide a power for the Law Society to make rules governing the handling (by solicitors) of accounts that are held in financial institutions other than banks or building societies.

Schedule 16 different provision for different cases

*Power conferred on: Law Society*

*Power exercisable by: Rules*

*Parliamentary procedure: None*

7. New Section 86A Solicitors Act 1974

8. The Solicitors Act 1974 provides the Law Society with a wide range of rule making powers. However, there is no provision within that Act for any of the rule making powers to be applied in anything other than a uniform way.

9. The Law Society wants greater flexibility to be able to apply its rules in varying degrees depending on the extent of regulatory risk it judges there to be.

10. The amendment therefore provides that the Law Society may make different provision in different circumstances and different cases when making rules under the 1974 Act. This principle already applies in relation to regulations made under the provisions of the Solicitors Act 1974.

Schedule 16- Powers to regulate recognised bodies under the Administration of Justice Act 1985

*Power conferred on: The Law Society*

*Power exercisable by: Rules*

*Parliamentary procedure: None required (approval by the Board)*

11. Under section 9 of the Administration of Justice Act, the Law Society currently has powers to make rules in respect of recognised bodies – i.e. companies or limited liability partnerships providing legal services. We have already amended these provisions to enable the Law Society to regulate partnerships, as well as ‘legal disciplinary practices’ i.e. entities managed and controlled by different types of authorised persons. We are introducing some further specific amendments to this regime with the aim of ensuring that the Law Society’s rule-making powers in this area are fully effective.

12. In particular, we are ensuring that the Law Society is able to make rules prescribing the manner and form and applicable fees for applications from recognised bodies, and rules enabling the Law Society to impose conditions upon recognised bodies, and to make provision about procedures for appeals from such conditions. We are also making provision to clarify that rules under section 9 generally may make different provision for different cases.
Schedule 16 regulatory arrangements

**Power conferred on:** Law Society

**Power exercisable by:** Rules

**Parliamentary procedure:** None

13. An amendment is required to Schedule 14 of the Courts and Legal Services Act 1990 ("CLSA") to ensure that regulations made under that Schedule or section 89 CLSA as amended by the Bill are treated as regulatory arrangements even if they do not fall under the definition of regulatory arrangements as contained in the Bill. This is necessary to ensure that any regulations made in relation to foreign lawyers, partnerships and recognised bodies are subject to the same approval by the Board as all other persons regulated by the Law Society.

Schedule 17 Variation of conditions

**Power conferred on:** The Council for Licensed Conveyancers

**Power exercisable by:** Rules

**Parliamentary procedure:** None

14. New Section 17A Administration of Justice Act 1985

15. A new rule making power is required to allow the Council for Licensed Conveyancers to prescribe the conditions which must be met before a licensed conveyancer, whose licence is subject to conditions, can apply to have those conditions varied or revoked. This is necessary as the new licensing regime allows licences to run for longer than the current 12 month limit. The new provision will allow an application to be made to vary or revoke the conditions applied to a licence. It also provides an appeals mechanism against a refusal by the Council to vary or revoke the conditions. Without these further powers, a condition, which was previously reviewable annually upon an application for licence renewal, could be fixed for the duration of that licence – even when it is no longer appropriate to have the condition in place in its current form or at all.

Schedule 17 Accountant’s reports

**Power conferred on:** The Council for Licensed Conveyancers

**Power exercisable by:** Rules

**Parliamentary procedure:** None

16. Currently the Administration of Justice Act 1985 prescribes that licensed conveyancers annual accounts must be approved by qualified company auditors. The Council for Licensed Conveyancers considers this is unduly prescriptive and onerous; particularly in respect of individual conveyancers or small firms. It wants greater flexibility to be able to take a risk based approach which will enable accounts, where they consider it appropriate, to be audited only by a qualified accountant. This approach is consistent with the recommendations in the Hampton report ‘Reducing administrative burdens: effective inspection and enforcement’.
17. The amendment seeks to alter Section 22 of the 1985 Act to allow the Council to specify, in its rules, requirements in relation to the provision of accountant’s reports.

Schedule 17 varying or revoking conditions (recognised bodies)

Power conferred on: Council for Licensed Conveyancers (Discipline and Appeals Committee)

Power exercisable by: Rules

Parliamentary procedure: None

18. This amendment seeks to alter Section 32 of the Administration of Justice Act 1985 to allow a recognised body (under the terms of that Act) to apply to the Council for licensed Conveyancers to vary or remove a condition attached to its certificate of recognition. The amendments also provides the Council with a power to make rules governing the circumstances in which a recognised body can make such an application to ensure that, for example, the application process is not subject to repeated applications to remove or vary a condition, which plainly needs to remain in force as it is.

Schedule 17 DAC reprimands of recognised bodies

Power conferred on: Council for Licensed Conveyancers (Discipline and Appeals Committee)

Power exercisable by: The Administration of Justice Act 1985

Parliamentary procedure: None

19. We are seeking to amend Schedule 6 of the 1985 Act to allow the Discipline and Appeals Committee of the Council for Licensed Conveyancers to reprimand a recognised body. At present, there is no such requirement for recognised bodies. An amendment here would allow the Discipline and Appeals Committee to directly a recognised body in the same way as it can reprimand individual licensed conveyancers under the 1985 Act (as amended by paragraph 12 of schedule 17 to the Bill.)

Schedule 17 Delegation of Functions

Power conferred on: The Council for Licensed Conveyancers

Power exercisable by: The Administration of Justice Act 1985

Parliamentary procedure: None

20. This amendment will allow the Council for Licensed Conveyancers to delegate its functions to, for example, a chairman of one of its sub-committees. This would be particularly useful where, for example, a grant is to be made out of the Compensation Fund. At present, the Council or the fund manager refers the matter to the Finance and General Purposes Committee who determine the matter and then refer it back to the fund manager or the Council to make the award. This three-tiered step is unduly onerous. We consider that allowing the Council to delegate its awards-making functions to the Chairman of the sub-committee would
alleviate this burden. Any delegation that takes place can be subject to such restrictions on the body to whom the function is to be discharged as the Council deem appropriate or necessary.

2 May 2007
APPENDIX 5: CORRESPONDENCE WITH THE LEADER OF THE HOUSE

Letter from the Chairman to the Leader of the House

1. The Delegated Powers and Regulatory Reform Committee is invaluably assisted in its work by the memoranda which the Government prepares explaining the delegated powers in each bill before the House.

2. As well as reporting on bills, we also consider, as time allows, Government amendments with a significant delegated powers aspect. In considering such amendments, we rely on the Government to submit a supplementary memorandum in accordance with paragraph 10 of our Guidance for departments. This practice is well established but, this session, there have been some inconvenient delays in the submission of supplementary memoranda. Last month, the Committee asked the Clerk to write to the Private Secretary to the Chief Whip to remind the Government that any such memorandum must be submitted on the day that the amendment is tabled. I am sure that the Private Secretary has circulated that reminder to bill teams.

3. My purpose in writing to you is to draw your attention to a further breakdown of the arrangements which, in these circumstances, is especially disappointing. Lord Hunt of Kings Heath submitted a supplementary memorandum on amendments to the Mental Health Bill on 12 March for report stage amendments that had been tabled on 8 February. This was not only after the completion of report stage, it was also after the third reading of the bill and its passage to the Commons. This was the third occasion on which this bill team had submitted a memorandum to us late. It is undesirable for the Government’s delay in submitting evidence to a Select Committee to frustrate that Committee’s duty to report to the House under its terms of reference. I hope I can look to you to ensure that the situation is not repeated.

28 March 2007

Letter from the Leader of the House to the Chairman

1. I am writing in response to your letter of 28 March about the late submission of memoranda on amendments containing delegated powers.

2. As you know, the Delegated Powers Committee’s work is highly regarded across Government and on all sides of the House. I am therefore very sorry that memoranda relating to two recent Bills were not submitted to the usual timetable.

3. On the specific matter mentioned in your letter, Lord Hunt has apologised to me for the delay, and I understand that he apologised to you and your Committee when the memorandum was submitted.

4. More generally, I have written to Lords Ministers and relevant officials to remind them of their responsibilities to your Committee.

5. I am copying this letter to the Clerk of the Delegated Powers and Regulatory Reform Committee.

17 April 2007
Letter from the Leader of the House to all Ministers in the House of Lords

1. I am writing to all Lords Ministers to emphasise how important it is for our Bill Teams to submit delegated powers memoranda to the Delegated Powers Committee on time.

2. Memoranda must be submitted to the Committee both when Bills are introduced in the Lords, and when any Government amendments (or Government supported amendments) are tabled which contain significant delegated powers or significantly amend an existing power. Bill memoranda should be submitted on or before introduction in the Lords, and amendment memoranda should be submitted on the day that amendments are tabled.

3. Recently two Bill teams have not submitted amendment memoranda until several days after tabling. This makes it difficult for the Committee to do its work, and leaves us open to criticisms that we are not treating the Committee or the House with sufficient respect. The Chairman has written to me to complain, and any further problems may cause Bills to run into difficulties in the Chamber.

4. Please make sure that all Bill teams in your departments and your Parliamentary branches are fully aware of, and are following, the Delegated Powers Committee’s guidance. The guidance is available on the Committee’s website: www.parliament.uk/parliamentary_committees/dprr.cfm. Bill teams should be encouraged to liaise closely with the Committee’s staff, and wherever possible to provide advance warning of any Government amendments containing delegated powers. Respecting the role of the House’s Committees in the scrutiny of legislation is an essential part of good Bill handling in the Lords.

17 April 2007