Delegated Powers & Regulatory Reform Committee

10th Report of Session 2006–07

Freedom of Information (Amendment) Bill

UK Borders Bill

Government amendment:

Corporate Manslaughter and Corporate Homicide Bill

Government responses:

Greater London Authority Bill

Offender Management Bill

Regulatory reform:

Draft Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007

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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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- The Lord Brett
- The Viscount Eccles CBE
- Lord Faulkner of Worcester
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Contacts for the Delegated Powers and Regulatory Reform Committee

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.
Tenth Report

FREEDOM OF INFORMATION (AMENDMENT) BILL

1. This private member’s bill brought from the Commons does not delegate legislative power.

UK BORDERS BILL

Introduction

2. This is an immigration and asylum bill. The topics in the bill are set out in paragraphs 3 to 20 of the Explanatory Notes and a memorandum from the Home Office about the delegated powers in the bill is printed at Appendix 1 to this Report. The bill includes two Henry VIII powers subject only to negative procedure (clauses 9(6) and 23(3)), both justified in our opinion.

Biometric registration regulations — clauses 5 to 8

3. The powers in clauses 5 to 8 to make regulations about biometric registration contain the most significant delegations in the bill and are described in paragraphs 3 to 22 of the memorandum. The powers are subject to affirmative resolution. We first make some specific observations about the provision and then comment on the cumulative effect of the delegations.

4. Clause 5(3)(a) to (c), (e) and (f) (paragraphs 9 and 11 of the memorandum) are similar to provisions in section 126 of the Nationality Immigration and Asylum Act 2002 (“the 2002 Act”). That section enables the Secretary of State by regulations to require information about external physical characteristics in connection with immigration applications or from persons entering or seeking to enter the UK.

5. Clause 5(7) provides for immigration rules (subject to negative procedure) to require a person applying for the issue of a biometric immigration document to provide non-biometric information to be recorded in it or retained by the Secretary of State. We were unsure from the memorandum (paragraphs 13 and 14) to what extent this enables information to be required which cannot already be required by immigration rules. So far as it does enable such information to be required, we consider that the provision requiring it should be in the regulations subject to affirmative procedure.

6. Although clause 7 requires regulations to include provision about the effect of failure to comply with a requirement of regulations under clause 5(1), and that provision may include requiring the Secretary of State to consider giving a notice under clause 9 (paragraph 21 of the memorandum), clause 9 itself is not affected. Clause 9 appears to enable the Secretary of State by notice to require someone to pay a penalty of up to £1,000 for failure to comply with a requirement of the regulations, regardless of whether or not the regulations have required the Secretary of State to consider giving a notice.
7. Clause 8(2), which enables the regulations to allow information required and obtained for the immigration purposes referred to in clause 5(1) to be used for specified purposes which do not relate to immigration, is preceded in section 126(4)(g) of the 2002 Act.

Cumulative effect of the delegations

8. The concept of biometric profiling for immigration purposes is not new: there is provision for it at sections 141 to 145 of the Immigration and Asylum Act 1999 (“the 1999 Act”) and section 126 of the 2002 Act. In a wider context, the concept is central to the Identity Cards Act 2006 (“the ID Cards Act”) and the bill contemplates that the biometric immigration document might be combined with an identity card (clause 5(4)).

9. The delegations in this bill are broader than section 126 of the 2002 Act. The main principles about biometric registration which appear in the bill itself are:

i) anyone subject to immigration control may be required to apply for a biometric immigration document and to use it for purposes connected with immigration;

ii) an applicant must provide information which may include biometric information and submit to a process for obtaining biometric information;

iii) that information might be allowed to be used for non-immigration purposes; and

iv) failure to apply for or use a biometric information document can result not just in a penalty of up to £1,000 but also in refusal of a claim or cancellation of leave to enter or remain.

10. Within that framework, the bill leaves the detail to regulations. Significant aspects left to regulations include:

i) the categories of person subject to immigration control who must have a biometric immigration document;

ii) the immigration purposes and procedures for which the document must be used;

iii) the other circumstances (where a question arises about nationality or immigration status) in which the document must be used;

iv) the content of the document;

v) the circumstances in which the document may be cancelled or suspended;

vi) the biometric information which must be provided and recorded;

vii) the precise consequences of failure to comply with any particular requirement; and

viii) the immigration and non-immigration purposes for which information may be used.

11. We draw the following particular aspects of the regime to the attention of the House:

i) Clause 5(1)(b)(iii) enables regulations, where a question arises about a person’s status in relation to nationality or immigration, to prescribe
circumstances in which the biometric immigration document must be used. Though clause 5(5) prevents the power being used to require the carrying of the document at all times, it is still potentially very wide and neither the Explanatory Notes nor the memorandum explain why this is necessary;

ii) clause 5(2)(g) enables regulations to provide for inspection or cancellation of a document (in contrast to section 11(2) of the ID Cards Act which specifies circumstances for cancellation in the Act itself), with neither the bill itself nor the Explanatory Notes nor the memorandum giving an indication of the circumstances in which cancellation may take place;

iii) clause 5(2)(h) requires the holder of a biometric immigration document “to notify the Secretary of State in specified circumstances” but does not indicate what is to be notified.

iv) clause 5(2)(k) enables the regulations to permit the Secretary of State, on issuing a biometric immigration document, to require the surrender of other documents. There is no restriction on the category of documents which may be required to be surrendered;

v) clause 5(3)(d) enables the regulations to permit the Secretary of State, instead of requiring information to be provided, to use any information already in his possession “for whatever reason”. Though this might be a way of preventing someone being asked to provide the same information twice, it raises issues as to the ability of the applicant to check that the information held (and given originally for a different purpose) is correct. We expect that the House would wish to see appropriate safeguards in the regulations;

vi) clause 5(3)(e) and (f) enable the regulations to require an authorised person to have regard to a code, or provisions of a code. But in section 126 of the 2002 Act the codes to which an authorised person may be required to have a regard are limited to those under the Police and Criminal Evidence Act 1984 (or the Northern Ireland equivalent).

vii) clause 8 requires the regulations to make provision about the use and retention by the Secretary of State of biometric information provided in accordance with the regulations. There is a requirement for the regulations to include provision for destruction of both biometric and non-biometric information. But the uses of the information obtained which may be permitted by the regulations are unrestricted by the bill; and

viii) most importantly, one cannot discern from the bill what failures to do what will attract what consequences. Clause 7(2) lists some of the sanctions which would be applied and clause 9 applies to any requirement of regulations under clause 5(1). The bill has a wider potential than that of section 126 of the 2002 Act or of immigration rules. For example, the power could be used to permit cancellation of leave to remain for failure to comply with a requirement to produce a biometric immigration document to resolve someone’s nationality status in a non-immigration matter (clause 5(1)(g)(iii)).

12. The cumulative effect of these issues, despite the affirmative procedure, gives us cause for concern. We do not however suggest
that the delegations are inappropriate: the bill does contain sufficient principle. Our intention is instead to indicate areas where the delegation may be wider than reasonably necessary to achieve the policy intention of the bill and where, in our opinion, the bill should more tightly define the framework for the regulations.

**Points-based applications: evidence — clause 19**

13. Clause 19 (new section 85A(5) of the Immigration and Asylum Act 2002) is explained at paragraphs 39 and 40 of the memorandum. It enables provision to be made about when evidence is to be treated as submitted in support of, and at the time of making, an application. This has significance for the purposes of whether or not the Asylum and Immigration Tribunal may consider an applicant’s evidence. Under the bill, the provision is to be made by immigration rules, which are made by the Secretary of State and for which there is a negative procedure (though the rules are not statutory instruments). Other procedural and evidential provision for the Tribunal is however made by rules by the Lord Chancellor (subject to negative procedure after consultation with the Council on Tribunals) under section 106 of the 2002 Act. We were not convinced by the explanation for this exception at paragraph 39 of the memorandum (that the Points Based System will operate within Immigration Rules) and draw the provision to the attention of the House so that the Minister might be asked to explain why the power was not in this instance also delegated to the Lord Chancellor.

**CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL — GOVERNMENT AMENDMENT**

14. We reported on this bill in our 3rd Report (HL Paper 19) and on Government amendments for Report stage in our 5th Report (HL Paper 44). We were invited to consider a Government amendment proposed by the Commons as Amendment No. 10A in HL Bill 72 (disagreed to by this House on 22 May). The amendment provided for the Secretary of State by order to amend the Act to bring people in custody or detention within the scope of the Act. The Ministry of Justice provided a supplementary memorandum on the amendment, printed at Appendix 2. There is nothing in the amendment which we wish to draw to the attention of the House and we consider the matter to be an issue of principle for the opinion of the House.
GREATER LONDON AUTHORITY BILL — GOVERNMENT RESPONSE

15. We reported on this bill in our 7th Report (HL Paper 85) and the Government have now responded by way of a letter to the Chairman from Baroness Andrews, Parliamentary Under Secretary of State at the Department for Communities and Local Government, printed at Appendix 3.

OFFENDER MANAGEMENT BILL — GOVERNMENT RESPONSE

16. We reported on this bill in our 7th Report (HL Paper 85) and the Government have now responded by way of a letter to the Chairman from Baroness Scotland of Asthal QC, Minister of State at the Home Office, printed at Appendix 4.

DRAFT REGULATORY REFORM (COLLABORATION ETC. BETWEEN OMBUDSMEN) ORDER 2007

17. This draft Order, laid before the House on 9 May for second stage scrutiny under the Regulatory Reform Act 2001, is in the same form (save for drafting improvements) as the first stage proposal for a draft Order laid on 18 December 2006 which, in our 5th Report (HL Paper 44), we considered met the requirements of the 2001 Act and was appropriate to be made under it. Accordingly, we recommend that this draft Order is in a form satisfactory to be submitted to the House for affirmative resolution. The department’s statement¹ (paragraphs 10-13), satisfactorily addresses two further issues, beyond the statutory tests, which we raised in our original Report.

APPENDIX 1: UK BORDERS BILL

Memorandum by the Home Office

1. The UK Borders Bill implements elements of the IND Review ‘Fair, Effective, Transparent and Trusted: Rebuilding Confidence in our Immigration System’, published in July 2006. The Bill is part of a package of measures to underpin the Border and Immigration Agency which consists of new powers, a substantial increase in enforcement resource and exploitation of identity technology, in particular to tackle illegal working.

2. This memorandum identifies provisions for delegated legislation in the Bill (as amended in the House of Commons). It seeks to explain the purpose of the delegated powers taken; describe why the Department considers that its subject matter is suitable for delegated legislation; and explain the Parliamentary procedure selected for each power and why it has been chosen.

Biometric Registration

Clause 5: Power to make regulations requiring a person subject to immigration control to apply for the issue of a document recording biometric information (a “biometric immigration document”), and to require that the document be used for specified purposes or in specified circumstances, and to require the person who produces the document to provide information for comparison with information provided in connection with the application for the document.

Clause 6: General supplemental provision in respect of clause 5

Clause 7: Supplemental provision for the effect of non-compliance with regulations made under clause 5

Clause 8: Supplemental provision about the use and retention of information provided in accordance with regulations made under clause 5

Clause 15(1): Supplemental provision about interpretation of clause 5, including provision enabling the regulations to provide that something may be done only where the Secretary of State is of a specified opinion

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by Statutory Instrument (or, in the case of clause 5(5) and 6(4) only, under the Immigration Rules)

Parliamentary procedure: Affirmative resolution (or, in the case of clause 5(5) and 6(4), in accordance with the procedure for the Immigration Rules under section 3(2) of the Immigration Act 1971)

Summary of the clauses

3. Clause 5(1)(a) gives the Secretary of State the power to make regulations requiring a person who is subject to immigration control to apply for the issue of a document recording biometric information – a “biometric immigration document”. A person subject to immigration control means someone who requires leave to enter or
remain in the United Kingdom, whether or not such leave has been given (clause 16(1)(a)). “Biometric information” means “external physical characteristics” which includes fingerprints and features of the iris or eye (clause 16(1)(c)). “Document” includes a card or sticker, and any other means of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods (clause 15(1)(b) and (c)).

4. Clause 5(1)(b) gives the Secretary of State the power to require a biometric immigration document be used for specified immigration purposes, in connection with specified immigration procedures, or in specified circumstances where a question arises about a person’s status in relation to nationality or immigration. However, by virtue of clause 5(5), these regulations can not make provision having the effect of requiring a person to carry a biometric immigration document at all times.

5. Clause 5(1)(c) enables the Secretary of State to require a person who produces a biometric immigration document by virtue of clause 5(1)(b) to provide information for comparison with information provided in connection with the application for the document.

6. Clause 5(2)(a) provides that regulations made under clause 5(1)(a) may apply generally or only to a specified class of persons subject to immigration control (for example, persons making or seeking to make a specified kind of application for immigration purposes).

7. Regulations may specify the period within which an application for a biometric immigration must be made (clause 5(2)(b)), may make provision about the issue and content of a document (which may include non-biometric information) (clause 5(2)(c) and (d)), may provide for the document to be combined with another document (clause 5(2)(e)), may provide for the documents to begin or cease to have effect (clause 5(2)(f)), may provide for the suspension, cancellation or surrender of the document (clause 5(2)(g), (i) and (j)), may require the holder of the document to notify the Secretary of State in specified circumstances (clause 5(2)(h)) and may require the surrender of other documents (clause 5(2)(k)).

8. Clause 5(3) provides that regulations may require an applicant to provide information, including biographical information or other non-biometric information.

9. In particular, the regulations may (a) require, or enable an authorised person to require, the provision of information in a specified form; (b) require an individual to submit, or enable an authorised person to submit, to a specified process by means of which information is obtained or recorded; (c) confer a function, including the exercise of a discretion) on an authorised person; (d) permit the Secretary of State, instead of requiring the provision of information, to use and retain information which is (for whatever reason) already in his possession; (e) require an authorised person to have regard to a code (with or without modification); (f) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Secretary of State.

10. Clause 5(4) will provide that regulations made under clause 5(1)(b) (requiring a biometric immigration document to be used for certain specified purposes) may require, in particular, the production or other use of a biometric immigration document that is combined with another document. It provides that section 16 of the Identity Cards Act 2006 (prohibition of requirement to produce ID card) is subject to this subsection.
11. Regulations made under clause 5(1)(c) (which enable the Secretary of State to require the provision of information for comparison with information provided in connection with the original application for the document) may (a) require, or enable an authorised person to require, the provision of information in a specified form; (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded; (c) require a authorised person to have regard to a code (with or without modification) and (d) require an authorised person to have regard to specified provisions of a code (with or without modification) (clause 5(6)).

12. “Authorised person” has the meaning given under section 141(5) of the Immigration and Asylum Act 1999, namely, a constable, an immigration officer, a prison officer, an official of the Secretary of State authorised for the purposes, a person who is employed by a contractor in connection with a removal centre contract.

13. Under clause 5(7) immigration rules made under section 3 of the Immigration Act 1971 may require a person applying for the issue of a biometric immigration document to provide non-biometric information to be recorded in it or retained by the Secretary of State.

14. Clause 5(3) to (5) are without prejudice to the generality of section 50 of the Immigration, Asylum and Nationality Act 2006 (which gives the Secretary of State the power to make immigration rules setting out the procedure for immigration applications or claims).

15. Clause 6(2) provides that regulations under clause 5 may require a person who holds a biometric immigration document issued under earlier regulations to apply under the new regulations.

16. Clause 6(3) makes provision for similar safeguards in respect of children as those which apply where fingerprints are taken under section 141 of the Immigration and Asylum Act 1999.

17. Clause 6(4) provides that the immigration rules may make provision with reference to compliance or non-compliance with regulations.

18. Clause 6(5) provides that where the Secretary of State uses information for the purposes of the regulations which is already in his possession (instead of requiring the person to provide the information again) then that information can, effectively, be used and retained just as if it had been provided in accordance with the regulations.

19. Clause 6(6) provides that regulations may make provision having effect generally or only in specific cases or circumstances; may make different provision for different circumstances; may include incidental, consequential or transitional provision, shall be made by statutory instrument subject to affirmative resolution.

20. Clause 7 provides that regulations under clause 5 shall include provision about the effect of failure to comply with a requirement of the regulations. In particular, regulations may require or permit an application for a biometric document to be refused; an application or claim in connection with immigration to be disregarded or refused; the cancellation or variation of leave to enter or remain in the United Kingdom; require the Secretary of State to consider giving a notice under section 9; provide for the consequence of a failure to be at the discretion of the Secretary of State.
21. Clause 8 provides that regulations made under clause 5 must make provision about the use and retention of biometric information provided in accordance with the regulations. The regulations may include provision permitting the use of information for specified purposes which do not relate to immigration (clause 8(2)). Regulations must include provision about the destruction of biometric information contained or recorded by virtue of the regulations (clause 8(3)). They must require the destruction of information if the Secretary of State thinks it is no longer likely to be of use in connection with a function under the Immigration Acts or for a specified non-immigration purpose. The regulations must include similar provision on destruction of copies and access to electronic data as under section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999. However, this does not require the destruction of information which is retained in accordance with, and for the purposes of, another enactment (clause 8(4)).

22. Clause 15(1)(f) provides that regulations made under clause 5 enabling something to be done by the Secretary of State may, but need not, enable it to be done only where the Secretary of State is of a specified opinion.

Comment on the delegated powers provided for by the clauses

23. These powers provide for a new secure biometric document which will serve as reliable evidence of immigration status and will supersede other less reliable, less secure means of proving immigration status. The document will be issued to different categories of those subject to immigration control incrementally. Practically, it would not be possible to require all those subject to immigration control to apply for a biometric immigration document at the same time because of the numbers involved. In addition, the issue of the documents is a complex procedure, requiring provision for issue, timing, content, validity, expiry, surrender, cancellation of the document, for the processes which will apply, the retention and use of information, and the effect of non-compliance, amongst other things. As such, the department thinks that the power for the Secretary of State to impose the requirement in stages through secondary legislation, in accordance with the operational realities, and with the discretion to take into account different circumstances and cases, is essential.

24. The regulation-making powers are subject to affirmative resolution. The department thinks this is an appropriate level of Parliamentary scrutiny. It is the same as other existing powers enabling the Secretary of State to take information about a person’s external physical characteristics (for example section 126 of the Nationality, Immigration and Asylum Act 2002).

25. Clause 5(7) enables the Secretary of State, by the Immigration Rules, to require an applicant to provide information. It is intended that Rules made under this provision will set out the types of biographical and other evidence required, and the form and process for providing this information. The department thinks that this is the appropriate level of scrutiny. It is in line with existing powers for the Secretary of State to set out the processes and information required for an immigration application in the Rules (see section 50 of the Immigration, Asylum and Nationality Act 2006 – which also applies to an application for a biometric document by virtue of clause 5(4) and 16(2)(a)). The Rules will not impose the requirement for biometric information to be provided, nor the processes to be followed. This type of more sensitive information will be required under the affirmative regulations.

26. Clause 6(4) provides that the Immigration Rules may make provision with reference to compliance or non-compliance with regulations. This will mean the Rules can provide that failure to comply with a requirement of the clause 5 regulations is a
ground for refusal or cancellation of leave, for example. The department thinks this is the appropriate level of scrutiny for this type of provision which will mirror the equivalent power to refuse or cancel for non-compliance made in the affirmative regulations. For comparison see paragraph 320(20) of the Immigration Rules which provides that leave to enter may be refused if a person fails to comply with a requirement relating to the provision of biometric information to which he is subject by regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002. This ground for refusal in the Immigration Rules mirrors the provision under the Article 7(2) and (3) of the Immigration (Provision of Physical Data) Regulations 2006 which enables leave to enter to be refused if the person fails to comply with the regulations (made under section 126). The reason for the apparent duplication is that the Rules are intended to provide a comprehensive, accessible list of the grounds for refusal or cancellation of leave.

Clause 9 to clause 14: civil penalty for failure to comply with a requirement of regulations made under clause 5

Powers conferred on: Secretary of State

Powers exercised by: Order made by Statutory Instrument

Parliamentary procedure: Negative resolution

27. Clauses 9 to 14 enable the Secretary of State to require a person to pay a penalty for failing to comply with a requirement of regulations made under clause 5. The clauses set out the procedure for the imposition of the penalty, for objection to the penalty, for appeal against the penalty, for enforcement of the penalty, and for a code of practice to be issued in respect of the civil penalty scheme. The clauses provide for various matters to be provided for or prescribed by Order, subject to negative resolution.

28. In particular:
   - clause 9(6) enables the Secretary of State to amend clause 9(3) to raise the maximum penalty to reflect a change in the value of money;
   - clause 10(2)(b) and (c) provide a notice of objection against a penalty must comply with any prescribed requirements as to form and content, and be given within the prescribed period;
   - clause 10(4) provides that in considering the objection, the Secretary of State must act in accordance with any prescribed requirements and within the prescribed period or such longer period as may be agreed;
   - clause 13 provides that the Secretary of State may issue a Code of Practice which must be laid before Parliament before issue, and which comes into force at the prescribed time.

29. Under clause 14 “prescribed” means prescribed by the Secretary of State by Order. An Order (including an Order under clause 9(6) may make provision generally or only for specified purposes, it may make different provision for different purposes, shall be made by statutory instrument, and shall be subject to negative resolution.

30. The principles of the civil penalty scheme are provided for on the face of the primary legislation. The department thinks it is appropriate for some of the details
of the operation of the scheme, such as the format for an objection notice etc., to be provided for in secondary legislation, as they may be liable to change.

31. The department also thinks this is the appropriate level of scrutiny. It is comparable to the existing regimes for civil penalties, for example under section 15 to 20 of the Immigration, Asylum and Nationality Act 2006 (civil penalty for employing an illegal worker). The only distinction is that an Order prescribing the maximum penalty must be subject to affirmative procedure under the 2006 Act. However, clauses 9(3) and (6) differ from the 2006 Act because the maximum penalty is set out in the primary legislation, with the power to increase the sum, only to reflect inflation, is subject to negative resolution. The department thinks negative resolution is justified because the maximum is already clearly provided for in the primary legislation, any increase can only reflect inflation.

Clause 11(6): Rules of court to make provision about the timing of an appeal against a civil penalty

**England and Wales**

*Powers conferred on:* Rule committee, with approval of the Lord Chancellor, under section 2 and 3 of the Civil Procedure Act 1997.

*Powers exercised by:* Statutory Instrument, see section 3 of the Civil Procedure Act 1997.

*Parliamentary procedure:* Negative resolution.

**Scotland**

*Powers conferred on:* Court of Session following consultation with the Sheriff Court Rules Council, under section 32 and 34 of the Sheriff Courts (Scotland) Act 1971.

*Powers exercised by:* Act of Sederunt – Scottish Statutory Instrument

*Parliamentary Procedure:* None

**Northern Ireland**

*Powers conferred on:* the Rules Committee, subject to approval by the Lord Chancellor, by section 55A of the Judicature (Northern Ireland) Act 1978.

*Powers exercised by:* Statutory Rule

*Parliamentary Procedure:* subject to annulment (i.e. negative resolution procedure)

32. Under Clause 11(6) Rules of the court may make provision about the timing of an appeal under this section.

33. As this is a matter concerning court procedure, the department thinks it is appropriate for the timing to be set out in rules of the court. The department thinks the level of scrutiny applicable to court rules in the different legal jurisdictions provides the appropriate level of scrutiny for this additional matter which is to be covered in the rules. This is comparable to section 33(2) of the Identity Cards Act 2006.
Support for Failed Asylum Seekers

Clause 17

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

34. Clause 17(a) and (b) provide a power to make regulations prescribing the period a person continues to be an asylum-seeker after an appeal ceases to be pending.

35. Clause 17 provides that a person whose claim for asylum has been refused and who can bring an in-country appeal or is pursuing such an appeal against an immigration decision will remain an asylum-seeker whilst the appeal is pending for the purposes of section 4 and Part VI of the Immigration and Asylum Act 1999 (the 1999 Act), Part 2 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and Schedule 3 to the 2002 Act.

36. Clause 17(a) and (b) gives the Secretary of State the power to make regulations prescribing, for the purposes of section 4 and Part VI of the 1999 Act and Part 2 of the 2002 Act, the period that a person’s status as an asylum-seeker continues after his appeal ceases to be pending. The regulations may only specify the end date; the start date (the date on which the appeal ceases to be pending) is set out in primary legislation. The department thinks that it is appropriate for the end date to be the subject of secondary legislation.

37. This power is comparable to those in section 94(3) of the 1999 Act and section 21(3) of the 2002 Act both of which are subject to the same level of Parliamentary scrutiny as this provision.

Points-Based Applications: No New Evidence on Appeal

Clause 19(2): Power to specify within immigration rules the circumstances in which evidence is to be treated as having been submitted in support of and at the time of making an application under a ‘Points Based System’

Power conferred on: Secretary of State

Power exercised by: Immigration Rules

Parliamentary procedure: Procedure provided for by section 3(2) of the Immigration Act 1971

38. Clause 19 of the Bill amends Part 5 of the Nationality, Immigration and Asylum Act 2002 by inserting a new section 85A. This provides that where an application falls to be considered under a ‘Points Based System’ the Tribunal may only consider evidence submitted at the time of making this application when hearing any appeal against any refusal. This exclusionary rule only applies insofar as the appeal concerns the applicant’s entitlement to points under the Points Based System.

39. In order to ensure that this provision operates consistently with the Points Based System it is important that there is scope to specify the exact circumstances in which evidence is to be treated as having been submitted at the time of making an application under the Points Based System. As the Points Based System will, for the
most part, operate within the immigration rules it makes sense for the rules to specify the circumstances in which evidence will fall be considered under the system. This is provided for by new section 85A(5). The circumstances in which evidence should fall to be treated as having been submitted at the time of making an application is a matter of detail not appropriate for primary legislation, which will require to be tailored to the specifics of the application process, and it is appropriate for such provision to be subject to the procedure appropriate to rule changes.

Fees

Clause 20(2) and (3)

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution

Clause 20(4)

Powers conferred on: Her Majesty

Powers exercised by: Order in Council

Parliamentary procedure: Affirmative resolution

40. Clause 20 provides the Secretary of State with two new powers.

41. First, it provides the Secretary of State with a power when making regulations under section 51(3) of the Immigration, Asylum and Nationality Act 2006 (‘the 2006 Act’) specifying the amount of a fee in respect of an application or process in connection with sponsorship of persons seeking leave to enter or remain in the United Kingdom, to prescribe an amount which is intended to exceed the administrative cost of determining the application or undertaking the process, and reflect benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, to whom the application relates or by or for whom the process is undertaken, if the application is successful or the process is completed.

42. It does so by inserting a new paragraph, (da), in subsection (2) of section 42 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (‘the 2004 Act’). This will mean that fees specified in regulations made under section 51(3) of the 2006 Act, in reliance on section 42(1) of the 2004 Act, for applications or processes in connection with sponsorship of the relevant persons, will, by virtue of section 42(7) of the 2004 Act, be subject to approval by a resolution of each House of Parliament.

43. Regulations made in reliance on section 42(1) of the 2004 Act are already subject to affirmative procedure and it is considered appropriate that fees which are set at a level not related to the administrative cost of providing the relevant service services should be subject to approval by both Houses of Parliament.

44. Secondly, clause 20 provides the Secretary of State with a power when making regulations under section 51(3) of the 2006 Act, specifying a fee for a matter in respect of which an order has been made under section 51(1) or (2) of that Act, to
specify an amount which reflects, in addition to costs referable to the particular matter, costs referable to:

i) any other matter in respect of which the Secretary of State has made an order under section 51(1) or (2) of that Act;

ii) the determination of applications for entry clearances;

iii) the determination of applications for transit visas;

iv) the determination of applications for certificates of entitlement to the right of abode in the United Kingdom.

45. It does so by inserting a new subsection, (2A), into section 42 of the 2004 Act. By virtue of section 42(7) of that Act therefore, a draft of the regulations which are to be made in reliance on this new power will be subject to approval by resolution of both Houses of Parliament. The department considers it appropriate that fees prescribed in reliance on this power to cross-subsidise, which will be set at a level above the administrative cost of the particular service for which the fee is charged, should be subject to the approval by both Houses of Parliament.

46. In addition, clause 20 also provides a power to set the amount of a fee prescribed by Her Majesty by Order in Council under section 1 of the Consular Fees Act 1980 (‘the 1980 Act’) in respect of a matter referred to in paragraph 7(ii) to (iv) above, so as to reflect costs referable to any matter in respect of which the Secretary of State has made an order under section 51(1) or (2) of the 2006 Act.

47. Again it does so by inserting a new subsection, (3A), into section 42 of the 2004 Act. Therefore by virtue of section 42(7) of that Act, an Order in Council may not be made in reliance on this new power unless a draft of that Order has been laid before and approved by resolution of each House of Parliament. The department considers it appropriate that fees prescribed in reliance on this power to cross-subsidise should be subject to approval of Parliament.

**Power to Seize Cash**

**Clause 23(3): Power to amend subsection (2)(c) so as to reflect any changes made to the nomenclature used in relation to a civil servant of the rank of Assistant Director**

*Power conferred on: Secretary of State*

*Power exercised by: Order made by statutory instrument*

*Parliamentary procedure: Negative resolution*

48. Section 289 of the Proceeds of Crime Act 2002 (‘POCA’) allows a customs officer or police constable to search for cash where there are reasonable grounds for suspecting that such cash is the proceeds of unlawful conduct or is intended for use in connection with unlawful conduct. Clause 21 will enable Immigration Officers to exercise these and other related POCA powers.

49. In order to exercise the powers in section 289 it will be necessary for an Immigration Officer to obtain judicial approval unless it is not practicable to do so. Where it is not practicable to obtain judicial approval authorisation must be sought from a civil servant of at least the rank of Assistant Director.
50. This power will allow subsection (2)(c) to be amended by order so as to reflect a change in the nomenclature used in relation to a civil servant of the rank of Assistant Director. Although this order making power will allow the amendment of primary legislation by later subordinate legislation and is therefore a Henry VIII clause the order making power is only subject to the negative resolution procedure. This level of scrutiny is, however, fully justified as the amendment will only allow for an amendment to the nomenclature used rather than to the substantive operation of the provision. It would not, for example, be possible for the order making power to be used so as to allow authorisation to be provided by a civil servant of a lower grade.

**Power to dispose of Property**

*Powers conferred on:* Secretary of State

*Powers exercised by:* Regulations made by Statutory Instrument

*Parliamentary procedure:* Negative resolution

**Clause 25(5): Power to make regulations for the disposal of property which has come into the possession of an immigration officer or the Secretary of State in the course of or in connection with a function under the Immigration Acts**

51. Clause 25(5) gives the Secretary of State the power to make regulations for the disposal of property which has come into the possession of an immigration officer or the Secretary of State in the course of or in connection with a function under the Immigration Acts.

52. The Secretary of State may make regulations where the owner has not be ascertained, or, in respect of property which has been forfeited under clause 24 of the Bill or section 25C of the Immigration Act 1971 where the court has not made an order under clause 25(4) (because the application for the order was not made in time; or the applicant (if not the Secretary of State) did not satisfy the court that he did not consent to the offender's use of the property or that he did not know and had no reason to suspect that the property was to be used in connection with an offence).

53. Clause 25(6) provides that regulations may make provision that is the same, or similar, to provision that may be made by regulations under section 2 of the Police (Property) Act 1897 (or Northern Ireland or Scottish equivalents). The regulations may apply regulations under the 1897 Act, without or without modifications. They may provide for property to vest in the Secretary of State. They may make provision about the timing of disposal which may differ from provision made by or under the 1897 Act. They shall have effect only so far as this is not inconsistent with any order of the court. The regulations shall be made by statutory instrument and shall be subject to negative resolution.

54. The main principle of the power to dispose is set out in the primary legislation. The department thinks that it is appropriate for the detail for the provisions for disposal to be set out in secondary legislation and subject to this level of scrutiny. The provisions are intended to allow equivalent secondary legislation to be made allowing for disposal of property as those which currently enable disposal of property in the possession of the police, or the Serious Organised Crime Agency (in England and Wales). The existing provisions are subject to the same level of Parliamentary scrutiny as the existing equivalents.
Border and Immigration Inspectorate

Clause 50: Plans

Clause 51: Relationship with other bodies: general

Clause 52: Relationship with other bodies: non-interference notices

Clause 54: Prescribed matters

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

55. By way of background, clause 47 provides for the appointment of a person as Chief Inspector of the Border and Immigration Agency whose function is to monitor and report on the efficiency and effectiveness of the Agency.

56. Clause 52 provides that in the clauses dealing with the Chief Inspector “prescribed” means prescribed by order of the Secretary of State. Clause 52 goes onto say that an order under any of the clauses dealing with the Chief Inspector prescribing a person may specify one of more persons or a class of person. An order under any of those clauses is subject to the negative resolution procedure and may make provision generally or for specified purposes, may make different provision for different purposes and may include incidental or transitional provision. This is relevant as follows:

57. Clause 50 obliges the Chief Inspector to prepare plans describing the objectives and terms of proposed inspections. Plans are to be prepared at prescribed times and in respect of prescribed periods. In preparing plans, the Chief Inspector must consult prescribed persons. Once a plan is prepared, the Chief Inspector must send a copy to each prescribed person. These last two requirements are subject to agreement between the Chief Inspector and the prescribed person to disapply such a requirement.

58. Clause 51 obliges the Chief Inspector to co-operate with prescribed persons insofar as he thinks it consistent with the efficient and effective performance of his functions. The clause also allows the Chief Inspector to act jointly with prescribed persons where he thinks it in the interests of the efficient and effective performance of his functions, to assist a prescribed person and to delegate a specified aspect of his functions to a prescribed person.

59. Clause 52 allows the Chief Inspector to give a prescribed person who proposes to inspect any aspect of the work of the Border and Immigration Agency a notice prohibiting him from doing so, if the Chief Inspector thinks that the inspection may impose an unreasonable burden on the Agency. The notice must be in the prescribed form and contain the prescribed information. Further, the Secretary of State may by order make provision about the timing, publication and revision or withdrawal of such notices.

60. This framework is broadly comparable to, and has been modelled on, those provided for by sections 28 to 32 of the Police and Justice Act 2006 in relation to other inspectorates such as Her Majesty’s Inspectors of Constabulary.
61. The principles – i.e. that the Chief Inspector (i) must prepare plans and involve others in that process, (ii) must co-operate with others where necessary, (iii) may act jointly with, assist and delegate to others and (iv) may prevent others from undertaking burdensome inspections of the Border and Immigration Agency – are provided for on the face of the primary legislation. The Department thinks it is appropriate for some of the details of the operation of the framework, such as the format which plans and notices must take, the information they must contain and their timing, to be provided for in secondary legislation, as they may be liable to change.

62. The Department also thinks this is the appropriate level of scrutiny. It is the same as the level of scrutiny provided in relation to the similar frameworks provided for by section 28 to 32 of the Police and Justice Act 2006.

Home Office

May 2007
APPENDIX 2: CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL — GOVERNMENT AMENDMENT

Supplementary Memorandum by the Ministry of Justice

1. This memorandum draws the Committee’s attention to a delegated power that is included in an amendment which the Government has tabled to the Corporate Manslaughter and Corporate Homicide Bill.

New subsections to be inserted after clause 2(5): Power to extend the offence of corporate manslaughter or corporate homicide to deaths in custody

- **Power conferred on:** Secretary of State
- **Power exercisable by:** Order made by statutory instrument
- **Parliamentary procedure:** Affirmative resolution

2. Clause 1 of the Bill provides that the offence of corporate manslaughter or corporate homicide is committed if the way in which an organisation’s activities are managed or organised causes a person’s death and amounts to a gross breach of a relevant duty of care owed to the deceased. Clause 2 defines a “relevant duty of care” as one of a specified list of duties owed under the law of negligence. This list includes duties owed as employer or occupier of premises, or in connection with the supply of goods or services, the carrying on of construction or maintenance operations, the carrying on of other activities on a commercial basis or the use of any plant, vehicle or other thing.

3. An amendment tabled by the Government seeks to give the Secretary of State a power by order to amend clause 2 so that a duty of care owed by an organisation to a person who is in custody or detention, or who is otherwise on premises in circumstances where the organisation is thereby responsible for his safety, is a “relevant duty of care”. The amendment would also make provision for the power to be exercised to amend the Bill so as to specify exceptions to the application of any such extension, and to make any amendment to the Bill that was incidental or supplemental to, or consequential on, such an exercise of the power.

4. Parliament has extensively debated whether the Bill should be extended to cover deaths in custody, and each House has voted on the issue. In the House of Commons at Report an amendment to this effect was defeated by 288 votes to 168 (see Hansard 4th December col 93-112) and in the House of Lords at Report an amendment was passed by 223 votes to 127 (see Hansard 5th February 2007 col 501-525). The amendment tabled by the Government responds to the strength of feeling expressed in Parliament on the issue, while reflecting the Government’s view that it would not, at least for the present, be appropriate for the offence of corporate manslaughter to apply to deaths in custody.

5. The references in the new subsection (5A)(a) inserted by the amendment to the power extending to “premises of a specified description” and to “specified circumstances” are included so that the power is wide enough to cover all potentially relevant circumstances. For example, in some cases it is considered that a duty of care owed in respect of the operation of secure children’s homes would be of a type capable of being a “relevant duty of care” because it would fall within the category of the supply of services under clause 2(1)(c)(i). However the offence
might still not apply in these cases because of the exemption for duties owed in respect of an “exclusively public function” in clause 3(2). The extension of the enabling power to cover these circumstances therefore ensures that if necessary such duties can be specified in the order and the exemption disapplied under the power in subsection (5B)(a).

6. The power to specify exceptions in subsection (5B)(a) of the proposed amendment is included because it is likely that any exercise of the power extending the offence to deaths in custody would need to be accompanied by amendments to some of the exemptions contained in clauses 3 to 7. In particular, it is likely that the exemption for exclusively public functions in clause 3(2) of the Bill would need to be disapplied in relation to deaths in custody.

7. The power to make any incidental, supplemental or consequential amendments is included to enable other provisions of the Bill to be amended in consequence of an order under subsection (5A). For example, an order under that subsection might use a term whose definition could, under subsection (5B)(b), be inserted into the list in the interpretation clause.

8. An order under the new clause would be subject to the affirmative resolution procedure. The Government considers this level of Parliamentary scrutiny is appropriate for an order that would have the effect of expanding the circumstances in which a serious criminal offence could be committed.

Ministry of Justice

May 2007
Letter to the Chairman from the Baroness Andrews OBE, Parliamentary Under Secretary of State, Department for Communities and Local Government

1. Further to my letter of 27 April I am writing to set out the Government’s response to the Delegated Powers and Regulatory Reform Committee’s Seventh Report of Session 2006-07 on the Greater London Authority (GLA) Bill, published on 29 March.

2. The Committee made two recommendations in respect to Henry VIII powers in the Bill. The first relates to clause 49 which enables the GLA and its functional bodies to enter into arrangements for the provision of administrative, professional or technical services by one to another, by agreement. The clause includes provision for the Secretary of State by order to extend or restrict the services or functions to which the section applies. The order making power is currently subject to the negative resolution procedure but the Committee considered the affirmative procedure would be more appropriate given the broad scope of this power. We agree with this conclusion, and are bringing forward an amendment to the Bill at Committee stage to make the order making power subject to the affirmative resolution procedure.

3. The second recommendation relates to the scope of the Secretary of State’s order-making powers under clause 50 of the Bill. The Secretary of State will be able to make incidental, consequential, supplemental or transitional provision or savings in any order made under the Act, including power under clause 50(2) to amend any enactment (whenever passed or made).

4. The Committee considered that there must be strong justification for any power to amend future Acts, and the need for the power had not been demonstrated in this case. It recommended either the removal of the power or, if clause 50(2) remains as it is, that orders containing provision under that clause should be subject to affirmative procedure. We agree that there is insufficient justification to warrant a power to amend future Acts and are again bringing forward an amendment to the Bill at Committee stage to remove it.

5. The Committee also noted that there are places in the Bill which appear to blur the distinction between (binding) directions and (non-binding) guidance. It highlighted clause 36 as a case in point. This clause places a duty on London’s waste authorities to act in general conformity with the Mayor’s municipal waste strategy for London, so long as the requirement does not impose excessive additional costs on an authority. It gives the Secretary of State a power to issue guidance on what acting in general conformity means in practice and what should be regarded as excessive additional costs. London waste authorities are required to act in accordance with any guidance issued.

6. We believe this is a reasonable requirement. We intend the guidance to provide a broad definition of general conformity, building on an existing definition used in planning guidance, and a general explanation of what is meant by imposing excessive additional costs. Given the general nature of the guidance, we think it is reasonable to obligate boroughs to act in accordance with it.

7. The Committee noted in similar terms the requirement at clause 39 (new section 361A(2)(c) and 3(b) of the GLA Act). This clause places a new duty on each of the Mayor and Assembly to address climate change. It requires the Mayor and
Assembly to comply with guidance and directions issued by the Secretary of State in respect to the way they each perform their duty. We agree that, to be clear, it would be more appropriate to require the Mayor and Assembly to have regard to guidance issued by the Secretary of State (but to comply with any directions). We are bringing forward an amendment at Committee stage to make this change.

8. Finally, the Committee observed that in clause 28, new section 333A(6) enables the Secretary of State to direct matters to be contained in the London housing strategy. The Committee is right to note that for most other Mayoral strategies this is a matter for guidance and, in the case of the London Plan, mandatory content is dealt with by regulations subject to negative procedure. But, in the particular case of housing, we believe there is a strong case in favour of the Secretary of State being able to direct matters to be contained in the housing strategy.

9. The housing strategy, unlike the Mayor's other strategies, will have a direct influence on Government funding for housing in London. London has almost half the national Regional Housing Pot funding and consequently plays a significant role in the delivery of national housing priorities.

10. The Bill provides for the Secretary of State to issue guidance to the Mayor about what the housing strategy should include. We therefore envisage the Secretary of State using her power to direct under new section 333A(6) in only exceptional circumstances - for example in responding to a newly arising need which needed to be reflected quickly in the strategy. We do not believe that alternative approaches, such as using regulations subject to negative procedure, would always enable the Secretary of State to respond with sufficient speed for some funding decisions.

11. I am copying this letter to members of the Delegated Powers and Regulatory Reform Committee, all Members who have participated on the Bill so far and First Parliamentary Counsel.

2 May 2007
APPENDIX 4: OFFENDER MANAGEMENT BILL — GOVERNMENT RESPONSE

Letter to the Chairman from the Rt Hon. Baroness Scotland of Asthal QC, Minister of State, Home Office

1. I am grateful for your careful consideration of the Offender Management Bill, as set out in the Committee’s 7th Report of Session 2006-2007. This letter sets out how we propose to take forward the points you raised.

   *Power to establish trusts – clause 5*

2. I note your view that the power in clause 5(3)(c) should either be limited on the face of the Bill or be subject to the affirmative procedure. I am therefore tabling an amendment to make the power subject to the affirmative resolution procedure.

3. You also express concern about the fact that the power to establish and dissolve trusts in clause 5 is not subject to a parliamentary procedure, and feel that more information is needed on what we have in mind. You have helpfully drawn this to the attention of the House and I look forward to discussing our plans in more detail in Committee.

   *Disclosure for offender management purposes – clause 11*

4. Subsection (2) of clause 11 lists all organisations and persons whose *core business* is the day to day management of offenders. The Bill currently creates delegated powers to amend this list, under subsection (2)(h), in order to allow for future changes to the way offender management functions are discharged.

5. In your report you raised a concern about the power to amend other legislation provided by clause 11(7). This power provides the Secretary of State with the capacity to amend any future enactment which might prevent the sharing of data the sharing of which would otherwise be authorised by this clause. We acknowledge the validity of this concern and propose to table an amendment to this clause during the Committee stage as follows. The power to amend legislation which would prevent disclosure of information the sharing of which is otherwise authorised by this clause would be limited so that only existing legislation or legislation passed in the same parliamentary session as the Bill can be amended by secondary legislation. This revised power will not extend to acts or secondary legislation passed in future Parliamentary sessions.

   *Power of authorised person to perform custodial duties and search prisoners (clause 15)*

6. In your report you recommend that clause 15 (which enables non-Prison Custody Officers to be authorised to perform tasks that may involve custodial duties) be amended so that an indication is given of the sorts of tasks which might be listed in a Statutory Instrument (SI). Whilst we acknowledge the reasons for suggesting such an approach, we are reluctant to adopt this approach for some important reasons. Firstly, we have adopted the current approach in order to provide maximum flexibility so as to enable private prison staff to mirror the deployment patterns of their public sector equivalents. Seeking to list on the face of the Bill some of the tasks that may be authorised in secondary legislation will reduce that flexibility and will beg the question why all such tasks are not listed in primary legislation. That is in direct conflict with the rationale underlying the clause and would might risk compromising operational flexibility in future if one of the limitations set out in
statute needed to be removed or the view was taken that other limitations should be added to primary legislation.

7. We prefer a clean break whereby the limits of the authorising power are clear on the face of the Bill but that the specific tasks that can authorised under it are left solely to secondary legislation. We do not think that such an approach sacrifices transparency or deprives Parliament of an appropriate level of scrutiny. Adopting the suggest approach here will not remove the need to list all task in an SI and any such SI may still be debated by Parliament if it so wishes. Secondly, the suggestion fails, in our view, fully to take into account existing safeguards already included or implicit in the clause. Of course, any task that might be thought appropriate for a member of staff who is not a prisoner custody officer must be set out in a statutory instrument subject to the negative resolution procedure. In addition, when deciding whether a person should be authorised to do a listed task a director will have to assess whether they are appropriate to perform that task. Part of this assessment will require an examination of a person’s experience, competence and appropriateness to do the listed task in the particular circumstances in which s/he will be expected to perform it. Any authorisation given can be made subject to conditions or limitations if necessary and no authorisation can provide non-Prison Custody Officers with the power to use force.

8. As such, we believe that it is appropriate to proceed in the manner we propose without prejudicing public scrutiny.

Conveyance of prohibited articles into or out of prisons:

9. You have commented on clause 19 of the Bill which introduces the order making power in section 40A(6) of the Prison Act 1952, allowing the Secretary of State to add or remove list A or B items from the prohibited lists. You do not consider these arrangements inappropriate but you point out that section 40A(6) contains a Henry VIII power, the need for which was not addressed in the Delegated Powers Memorandum. You have drawn these provisions to the attention of the House and I look forward to discussing our plans in more detail in Committee.

Authorisations

10. You also draw the attention of the House to the fact that clause 20 as drafted enables the Secretary of State to grant authorisations relating to List B or C articles, either administratively or by prison rules and that in relation to articles in list A the option of prison rules is not available. You feel that the reasons for these options have not been fully explained in the memorandum and I will ensure that we are able to do so in Committee.

Effect of polygraphy condition:

11. You have recommended that, in order to provide an appropriate level of scrutiny to the making of rules, Rules relating to the conduct of polygraphy sessions (clause 25 (6)) should be made by statutory instrument subject to negative procedure, rather than by the Secretary of State. We accept on balance that this offers greater scrutiny to the procedure and propose to amend the Bill accordingly.

12. I think that the amendments we are proposing will result in an improved Bill and I am grateful for the Committee’s assistance.

9 May 2007