Delegated Powers & Regulatory Reform Committee

12th Report of Session 2006–07

Sustainable Communities Bill

Government amendments:
Building Societies (Funding) and Mutual Societies (Transfers) Bill

Government responses:
Local Government and Public Involvement in Health Bill

UK Borders Bill

Regulatory reform:
Draft Regulatory Reform (Deer) (England and Wales) 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
- The Baroness Fritchie DBE
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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.
Twelfth Report

SUSTAINABLE COMMUNITIES BILL

1. This private member’s bill, brought from the Commons, has Government support and the Department for Communities and Local Government has provided a memorandum for the Committee on the delegated powers in the bill, at clauses 5(1) and 7(4), printed at Appendix 1. The latter power is a Henry VIII power, but it is limited in its effect to substituting references to a “sustainable community strategy” for references to a “community strategy” and the negative procedure is appropriate. The power does however extend to amending future enactments and this appears unjustified (beyond the end of the current session) because future enactments can and should themselves refer to a “sustainable community strategy” as respects England. We also note that the power is to be exercised by regulations, when it would more appropriately be exercised by order.1

BUILDING SOCIETIES (FUNDING) AND MUTUAL SOCIETIES (TRANSFERS) BILL – GOVERNMENT AMENDMENTS FOR COMMITTEE STAGE

2. We reported on this bill in our 11th Report (HL Paper 126) and the Government have now invited us to consider amendments to be moved in Committee: amendments 1, 2, 3 and 7 on the marshalled list (HL Bill 65—I). HM Treasury have provided a supplementary memorandum, printed at Appendix 2. An order under clause 3 (Transfers to subsidiaries of other mutuals) would attract the hybrid instrument procedure in this House, which gives those whose private interests are adversely affected the opportunity to petition against the order. Amendment 1 disapplies that procedure. This is not inappropriate, but we draw the disapplication to the attention of the House, so that the House might satisfy itself that the consultation procedure proposed by the Government in their memorandum is an adequate substitute for the parliamentary procedure. Other than this point, there is nothing in the amendments which we wish to draw to the attention of the House.

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL – GOVERNMENT RESPONSE

3. We reported on this bill in our 11th Report (HL Paper 126) and the Government have now responded by way of a letter to the Chairman from Baroness Andrews, Parliamentary Under-Secretary of State at the

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1 As recommended by the Committee on Ministers’ Powers of 1932.
Department for Communities and Local Government. Both our recommendations and the Minister’s response are printed at Appendix 3. The response does not propose to follow the recommendations in paragraphs 10, 13, 20, 23 and 25 of our Report and we found the Government’s reasons for their position inadequate. The Minister accepts that she is “aware that the Committee looks at what is possible under the provision and not just the intent of the current administration” (paragraph 17) but, in large respect, her response seeks to justify the Government’s position by how they themselves intend to exercise the power rather than by what is possible. We draw this to the attention of the House so that, if it wishes, the House might further test the Government’s reasoning for their position.

UK BORDERS BILL – GOVERNMENT RESPONSE

4. We reported on this bill in our 10th Report (HL Paper 113) and the Government have now responded by way of a letter to the Chairman from Baroness Scotland of Asthal, Minister of State at the Home Office, printed at Appendix 4.

DRAFT REGULATORY REFORM (DEER) (ENGLAND AND WALES) ORDER 2007

5. This draft Order, laid before the House on 5 July for second-stage scrutiny under the Regulatory Reform Act 2001, follows 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. The draft Order differs from the original proposal in a number of respects: to give effect to recommendations of the House of Commons Regulatory Reform Committee (explained in paragraphs 16-28 of the department’s statement); a change to the close season for male Chinese water deer (paragraph 21); and a number of drafting improvements. None of the changes affects our opinion that the draft order meets the tests set out in the Regulatory Reform Act 2001. Accordingly, we recommend that the draft Order is in a form satisfactory to be submitted to the House for affirmative resolution.

APPENDIX 1: SUSTAINABLE COMMUNITIES BILL

Memorandum by the Department for Communities and Local Government

Introduction

1. This memorandum identifies provisions for delegated powers in the Sustainable Communities Bill (“the Bill”).

2. The Bill is a Private Members Bill. It was sponsored in the House of Commons by Nick Hurd MP. It passed through Report and Third Reading with Government support. The Bill was introduced to the House of Lords on 18 June.

3. The principal aim of the Bill is to promote the sustainability of local communities.

4. The Bill contains 3 provisions for delegated powers. These are new powers, each of which is exercisable by the Secretary of State by statutory instrument. There is one provision which contains power to amend primary legislation.

5. For each delegated power, the memorandum explains:
   - The purpose of the delegated power;
   - Why matters are to be provided for by delegated powers;
   - The way in which the power is expected to be used;
   - The procedure selected for each power and why it has been chosen

Background

6. The Sustainable Communities Bill is supported by a campaign called Local Works. This campaign, involving a number of civic, community and environmental organisations, began in 2002 following the publication of two reports by the New Economics Foundation – ‘Ghost Town Britain’ and ‘Clone Town Britain’. An initial draft of the Bill, prepared by Local Works, was supported by Liberal Democrat MP Julia Goldsworthy. A second version was adopted by Conservative MP Nick Hurd, who came top of the Private Members Bill ballot. The Bill was substantially amended both in Committee and at Report. The Bill passed its Report and Third Reading on 15 June with cross-party support. The current drafting of the Bill was introduced largely through consensual Government amendments.

The Delegation of Powers

7. In deciding whether subordinate legislation is the appropriate vehicle for any particular provision, CLG and other relevant Government Departments have been guided by the following criteria:
   - the desirability of not putting detailed provisions on the face of the Bill;
   - the need to ensure flexibility in responding to changing circumstances; and
   - decentralising power to the most appropriate level

Overview

8. The main provisions of the Sustainable Communities Bill are as follows:
• Secretary of State invites local authorities to make proposals which they consider would promote local sustainability. This might include transfer of functions from one body to another.

• Secretary of State appoints a “selector” (must be a body which represents local authorities) who, in co-operation with the Secretary of State & in accordance with regulations, short-lists proposals. Secretary of State decides which proposals to take forward (having tried to reach agreement with the selector).

• Secretary of State publishes decisions and publishes a statement of proposed action to implement the proposals that are being taken forward. Secretary of State publishes and lays before Parliament an annual progress report.

• Before submitting proposals local authorities must follow regulations made by the Secretary of State. These may include steps to be taken by the local authority before making proposals. They must require local authorities (who submit proposals) to consult local people and try to reach agreement with them. The Secretary of State must issue guidance about making proposals.

• Secretary of State makes arrangements for the production of “local spending reports” which map public money going into each local authority area.

• “Community strategies” are renamed as “sustainable community strategies” in named enactments. Secretary of State may by regulations amend any other enactment to rename “community strategy” in this way.

The Bill

Clause 3: Decision on Short-list

9. **Clause 3 (1)** requires the Secretary of State to appoint a person, the “selector”, (a body who represents the interests of local authorities). The selector is appointed to consider proposals made by local authorities under clause 2 of the Bill and to co-operate with the Secretary of State in drawing up a short-list. The Selector is required to draw up a short list of proposals in accordance with regulations made under clause 5 of the Bill.

10. Before making a decision on the short-list the Secretary of State is required to consult the selector and try and reach agreement with the selector.

Clause 5: Proposals: regulations

11. **Clause 5 (1)** requires the Secretary of State to make regulations about the procedure to be followed by a local authority before making any proposal under clause 2.

12. Before making regulations under clause 5 (both in relation to regulations made under clause 3(1) and clause 5(1)) the Secretary of State must consult both the selector and such other persons who represent the interests of local authorities as the Secretary of State thinks fit.

13. Regulations may, in particular -
• specify, or authorise the selector to specify, steps to be taken by a local authority before making proposals;
• specify steps to be taken by the selector in considering the proposals and drawing up a short-list;
• require the selector to prepare, and give to the Secretary of State, a report on the proposals.

14. Regulations must-
• require a local authority, before making any proposal to establish or recognise a panel of representatives of local persons and consult it about the proposal
• require a local authority to try to reach agreement about proposals with the panel or other persons consulted, and require a local authority to have regard to any guidance issued by the Secretary of State.

15. The flexibility of a delegated power is required to ensure that the detail of how the processes (of formulating the proposal and drawing up the short-list) are informed by consultation with interested parties. The Government considers that it is more appropriate for the detail of these processes to be included in delegated legislation rather than on the face of the Bill.

16. Regulations under this section must be made by statutory instrument, and will be subject to the negative resolution procedure. The negative resolution procedure reflects the fact that the regulations are likely to be consensual and non-controversial.

Clause 7(4): Sustainable community strategies

17. Clause 7(1) renames community strategies as sustainable community strategies in a number of named enactments.

18. The enactments named in this clause are:
• section 4(1), (2) and (3) of the Local Government Act 2000 (c. 22), and
• section 19(2)(f), (2)(g) and (7) of the Planning and Compulsory Purchase Act 2004 (c. 5) (local development documents).

19. The clause also amends section 4(5) of the Local Government Act 2000 (c. 22), inserting at end “, and as if for “sustainable community strategy” there were substituted “community strategy”. This ensures that the amended reference to sustainable community strategies only applies in relation to England. This mirrors the application of the Bill (to England and not Wales).

20. The clause also confers on the Secretary of State a power to amend by regulations any other enactment, whenever passed or made, to convert a reference to a “community strategy” to a reference to a “sustainable community strategy”.

21. The purpose of this clause and the delegated power it contains is not to change the nature of community strategies, or to require local authorities and their partners to produce new strategies. It is simply to recognise in statute the very important role that community strategies play in promoting the sustainability of local communities. In practice, community strategies are already often referred to as sustainable community strategies.

22. Regulations under this clause may amend an enactment only in so far as the enactment applies in relation to England, must be made by statutory instrument,
and will be subject to the negative resolution procedure. The negative resolution procedure reflects the fact that the regulations are likely to be non-controversial.

Department for Communities and Local Government

June 2007
Supplementary memorandum by HM Treasury

1. This memorandum relates to Government amendments to the Building Societies (Funding) and Mutual Societies (Transfers) Bill tabled for consideration at Committee stage of the Bill in the House of Lords.

2. The Committee considered the Bill as brought from the House of Commons in their 11th report. That report annexed the Treasury’s memorandum, which explains the background and purpose of the Bill as well as the delegated powers in the Bill.

3. The amendments now tabled by Lord Evans of Temple Guiting for the Government concern clause 3 of the Bill (transfers to subsidiaries of other mutuals). At Committee stage in the House of Commons, the Government gave a commitment to consider widening the scope of clause 3 to include mutual insurers. As there was insufficient time to produce and table further amendments at Third Reading in the Commons, the Government is now tabling appropriate amendments in the Lords.

4. The amendments extend the scope of clause 3 by adding a new category of mutual society, defined as an “EEA mutual society”. This category is intended to be wide enough to include mutual insurers, but also to ensure that there is no breach of EC law by allowing mutuals in other EEA states to benefit from the changes in the same way as UK mutuals. The amendments will ensure that the changes made to mutual society transfer procedures by an order under clause 3 will also apply where the transfer is to a subsidiary of an EEA mutual society.

5. The addition of “EEA mutual society” has resulted in further changes to clause 3, which affect the delegated powers in that clause and are explained below.

6. The final amendment is a permissive extent clause for the Channel Islands and the Isle of Man. The Government wanted to introduce this clause at Committee stage in the Commons but it was not possible to consult the Islands before Committee stage. The clause has now been tabled with the consent of the Islands.

Amendments 2 and 3 – EEA mutual society

Powers conferred on: HM Treasury

Powers exercised by: Order made by statutory instrument

Parliamentary procedure: affirmative or negative (see below)

7. These amendments widen the scope of the term “mutual society” in clause 3, which effectively widens the scope of the Treasury’s power in clause 3(1). They also give the Treasury a new order making power (amendment (3), sub-paragraph (c)) to specify particular types of cooperative or mutual undertakings as EEA mutuals.

8. The purpose of adding “EEA mutual society” to clause 3(9) is to ensure that mutual societies other than building societies, industrial and provident societies and friendly societies can benefit from changes made under the Bill. Specifically, the Treasury wishes to ensure that mutual insurers, and mutual societies established in

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3 House of Commons debates (public bill committee), 25 April 2007, col. 11.
other EEA states, can benefit. The mutual insurer sector in the UK includes several companies limited by guarantee and one company incorporated under a private Act of Parliament\(^4\), in addition to friendly societies and industrial and provident societies. “EEA mutual societies” will benefit from this change as a UK mutual society (building society, industrial and provident society or friendly society) will be able to transfer to a subsidiary of an EEA mutual society on the same terms as to a subsidiary of a UK mutual society.

9. The change will cover bodies in any EEA State to ensure that there is no breach of EC law on freedom of establishment and free movement of capital (as extended by the EEA Agreement). The references in paragraphs (a) and (b) to Council Regulation (EC) No. 1435/2003 include European Cooperative Societies within the scope of “EEA mutual societies” and use a concept (the cooperative) with which societies in other EEA states will be familiar.

10. The purpose of giving the Treasury a power, in paragraph (c), to specify additional cooperatives or mutual undertakings is to ensure that any genuine EEA mutual societies which are not covered by paragraphs (a) and (b) can be brought within the scope of the definition. Specifically, it might be considered that companies limited by guarantee operating on mutual principles are not “cooperatives” for the purposes of paragraph (b). There may be other classes of mutual societies, not caught by paragraph (b), which could be specified in an order under paragraph (c).

11. The Government considers that, in relation to the paragraph (c) power, it is more practical and appropriate to deal with additional classes of EEA society in secondary legislation. This will give the Treasury the opportunity to consult on what classes should be included in an order under paragraph (c), and to include more detail than may be appropriately included in the Bill. It will also mean that the power can be exercised from time to time as and when necessary, for example in response to a specific takeover situation.

12. The paragraph (c) power will be subject to the affirmative resolution procedure if exercised in an order which also amends the provisions referred to in paragraph (6), or to the negative resolution procedure otherwise (paragraph (7)). The Government considers that the negative resolution procedure would be appropriate if the power were exercised independently – it may for example be necessary to add a category of EEA mutual society at relatively short notice in a takeover situation. However, if the power is exercised in the main order implementing clause 3, the affirmative resolution procedure is appropriate.

**Amendment 1 (exclusion of hybrid instrument procedure)**

13. This amendment affects orders made under clause 3 which modify the primary legislation referred to in subsection (6) (which includes the transfer provisions for mutual societies). The widening of clause 3 to include EEA mutuals means that provision made under clause 3(2), giving members of the transferring mutual membership rights in the holding mutual, will also need to work where the holding mutual is an EEA mutual. One way of achieving this would be to require EEA mutuals to amend their constitutions, to give such persons a right to membership. This could raise the issue of hybridity if an order has effects which are peculiar to a particular mutual (for example, a mutual insurer established by a private Act of Parliament).

\(^4\) The Wesleyan Assurance Society
14. The purpose of this clause is therefore to exclude the hybrid instrument procedure in relation to any instrument which amends the transfer procedures for mutual societies. Exclusion of the hybrid instrument procedure will not in the Government's view put anyone at a disadvantage, as proposals for the implementation of clause 3 will be put to full public consultation and will be subject to the affirmative resolution procedure. However, it will rule out the possibility of additional technical complications which could result in delay and inconvenience in the making of an order under clause 3. It is a standard provision for this sort of situation.

Amendments 4 and 5 (relevant company)

15. These amendments effectively widen the scope of the clause 3(1) power by including bodies incorporated in other EEA states within the meaning of “subsidiary of a mutual society” (provided they meet the other criteria in subsection (10)). The purpose is to ensure that there is no discrimination, for EC law purposes, in favour of UK mutual societies. In particular, if an EEA mutual wishes to acquire a UK mutual as its subsidiary, it might be at a disadvantage if it could only do so by setting up a UK company subsidiary, as it might face more practical difficulties establishing and running a UK company subsidiary than a UK mutual would.

Amendment 6 (charging powers of the FSA)

16. This amendment widens the scope of the FSA’s fee charging powers under the Financial Services and Markets Act 2000, to allow it to charge fees in respect of any function conferred on it under the Bill.

17. The purpose is to ensure that the FSA can charge for any function conferred on it under the Bill, in particular where there is a transfer to a subsidiary of an EEA mutual. It will be a precondition of such a transfer that safeguards equivalent to those applicable to UK mutuals are in place, to (a) give members of the transferring mutual membership rights in the holding mutual and (b) restrict demutualization of the holding mutual and further transfers of the transferring mutual’s business. In most cases, transfers of business by mutual societies require FSA approval, and transferring mutuals will have to satisfy the FSA that these safeguards are in place. This could be more complex and difficult to demonstrate where the transfer is to a subsidiary of an EEA mutual, and could result in additional work and costs for the FSA. Therefore the Government and the FSA consider it appropriate that its fee charging powers are extended.

18. The existing procedures in the Financial Services and Markets Act 2000 for exercising the fee charging powers (by way of FSA rules) will apply.

Amendment 7 (Channel Islands and Isle of Man)

Power conferred on: Her Majesty in Council

Powers exercised by: Order in Council

Parliamentary procedure: none

19. This clause enables the Government to extend any of the provisions of the Act, with any appropriate modifications, to any of the Channel Islands or the Isle of Man.

20. The purpose is to allow relevant parts of the Bill (in particular clause 3) to be extended to the Channel Islands or the Isle of Man, and to ensures consistency with
other mutuals legislation. The Industrial and Provident Societies Acts 1965, 1975 and 1978 apply to the Channel Islands, and there are powers to apply the Friendly Societies Act 1992 to the Channel Islands and the Isle of Man, although these powers have not been fully used. Later legislation on industrial and provident societies includes clauses similar to this (Industrial and Provident Societies Act 2002 s.3, Cooperatives and Community Benefit Societies Act 2003 s.8). The Building Societies Act 1986 does not extend to the Islands, so this amendment is not relevant to clauses 1 and 2.

21. The Islands have been consulted on this clause in accordance with Government policy. The form and procedure are standard (see for example s.8 of the 2003 Act referred to above).

HM Treasury

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

1. I am writing to set out the Government’s response to the issues and recommendations made with regards to the above Bill in the 11th Report (Session 2006-07) of the Delegated Powers and Regulatory Reform Committee. Please accept my thanks for your time in considering the Bill’s provisions.

Parishes (paras 10-13)

2. The Committee makes two recommendations on Part 4:
   a) any exercise of the power (amended by clause 78) which permits a majority of the parish members to be appointed, or which enables an appointed member to be treated as an elected member for the purpose of the chairmanship or vice-chairmanship, should be subject to the affirmative procedure; and
   b) that there should be appropriate, legally enforceable publicity requirements in relation to a reorganisation Order made by a Principal Council that varies or revokes an Order made in Parliament (clause 88).

3. For (a), I am happy to provide assurances to the House that we will make regulations that will prevent either of these situations from arising. With this assurance given, we feel that the negative resolution procedure still provides an adequate level of parliamentary scrutiny.

4. With regards to (b), we feel that the publicity arrangements set out at clause 98 - which requires that a Principal Council must inform the Secretary of State, Electoral Commission and others after making a reorganisation order - are sufficient. We would certainly not look to incorporate any form of pre-notification or approval process in what is clearly a local matter, as in our view this would go against the devolutionary principles of the Bill.

Co-operation of English Authorities with Local Partners etc. (paras 15-16)

5. The Committee rightly identifies a discrepancy between the level of scrutiny relating to Wales and that relating to England regarding the power to amend any enactment that requires a Local Authority to prepare a plan or strategy.

6. The Welsh Assembly Government have considered this and instructed Parliamentary Counsel to change the level of scrutiny to the super-affirmative procedure in relation to the proposed powers for Welsh Ministers under section 7 of the Local Government Act 2000.

Conduct (paras 19-25)

7. The Committee makes three recommendations on Part 10:
   a) that the Order-making power at clause 192(4) - which allows the SoS to specify additional persons to whom Ethical Standards Officers may disclose information - should be subject to the affirmative procedure
unless limited in some way e.g. to those performing statutory or public functions;

b) that the Order-making power (clause 196) specifying what action can be taken in more serious conduct cases should go through the affirmative procedure (whereas purely procedural matters can be subject to the negative procedure); and

c) that the Order-making power (clause 199) authorising what sanctions may be imposed for breaches of the code of conduct should go through the affirmative procedure.

8. On (a), we believe that the sort of further bodies which would be included in the list are already limited by the context of the clause i.e. any addition would need to be consistent with our intention to further the effective operation of the conduct regime.

9. Exchange of information under this clause would only be appropriate for bodies whose functions are to promote ethical conduct in public life, and whose functions would be assisted if they received information from the Ethical Standards Officer.

10. For (b), we are of the view that requiring an affirmative order would not be appropriate as the intention is solely to provide a procedure for the working of the Adjudication Panel in cases where the standards committee thinks the sanctions available to it are insufficient. The sanctions available to Panel members in these cases will be the same as those specified within the Local Government Act 2000, and we do not intend to go wider than this in respect of decision-taking by members.

11. Finally in relation to (c), we feel that the negative resolution procedure is still appropriate and would point to the existing precedent for using it in Regulation 8 of the Local Authority (Code of Conduct) (Local Determination) (Amendment) Regulations 2004. The aim is to provide the Adjudication Panel with the same range of sanctions as standards committees (set out in the 2004 regulations) which are subject to the negative resolution procedure. It would therefore be consistent to align clause 199 with this.

12. We do not intend to give a greater range of sanctions to the Adjudication Panel under this clause than those already:

- available to standards committees under the 2004 Regulations; or
- provided for the Panel under the Local Government Act 2000.

Entities controlled etc. (paras 26-28)

13. The Committee makes two recommendations on Part 12:

a) that the Order-making power at clause 213(1) - enabling the SoS to require, prohibit or regulate the taking of actions by entities connected with a LA - should go through the affirmative procedure; and

b) that if clause 213(6) intended only to refer to the current Code of Practice on Local Authority Accounting (as seemed to be suggested in the delegated powers memo), then the provision should be so limited in this way.

14. On (a), the policy intention is to enable propriety controls to be attached to the wider range of bodies through which local authorities in England and Wales now operate, rather than just to local authority controlled and influenced companies as
currently defined in the Local Government and Housing Act 1989. The existing propriety controls, which have been in place since 1995, address the accountability, auditing and personnel requirements of a local authority company. Subject to consultation our broad intention is to replicate these in a new Order (made under clause 213). The previous order under the 1989 Act was subject to the negative resolution procedure.

15. The power is limited to entities which, according to proper practices in force at the time, are required to be included in the authority’s statement of accounts. This limits the scope of the power to those bodies in respect of which authorities have access to benefits or are exposed to loss. As with the 1989 Act, the power covers a limited range of entities, which will be limited further by the differential approach to the application of propriety controls that we intend to apply in the Order.

16. Our intention for pursuing a negative resolution procedure was in part that there may be exceptional circumstances where we need to use this power more widely than the existing propriety controls (as set out in the Local Authorities (Companies) Order 1995). This could be where an abuse comes to light in local authority entities, that might require the exercise of this power to prevent it continuing. This might arise if a local authority were to use a company as a means of circumventing the constraints on what a local authority may do. Should such a situation arise, the Government might need to take urgent action to prevent the abuse which would be more difficult if the provision were subject to the affirmative procedure.

17. However, we are aware that the Committee looks at what is possible under the provision and not just the intent of the current administration. Therefore we propose to change the resolution procedure to affirmative as requested by the Committee.

18. With regards to (b), we would point to the existing precedent for using ambulatory references to “documents” in legislation. Subsection 21(2)(b) of the Local Government Act 2003 allows for the definition of proper practices (for accounting purposes) to be:

19. “contained in a code of practice or other document which is identified for the purposes of this provision by regulations made by the Secretary of State”

20. Subsection 21(5) makes it clear that the power at subsection (2)(b) is not limited to existing documents, namely that future documents and re-issues of documents can be referred to.

21. The intention of Part 12 is to bring the propriety controls into line with the provisions at section 21, which enables the capital finance regime to rely heavily on the Code of Practice on Local Authority Accounting in the United Kingdom 2006: A Statement of Recommended Practice (“the CIPFA SORP”)

22. The problem with specifically referring to the CIPFA SORP document in legislation is that the reference will be ineffective should the document be re-issued or the name change. This may happen annually. Indeed it would also require a change to primary legislation were the Government to ultimately decide to rely on another reporting standard other than the CIPFA SORP.

23. In order to limit the document to a document used for accounting purposes, we are proposing to restrict the ambulatory references in Part 12 so that the only document which can be referred to (for example under clause 213(6)) is a document which has

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been identified as proper practices by regulations made under section 21 of the 2003 Act. The Committee suggested that the ability to refer to documents under clause 213 (and related clauses) be limited to CIPFA SORP. Our proposed amendment effectively achieves this as one of the three documents identified as proper practices in regulations made under section 21 is the CIPFA SORP.  

24. I trust this letter gives sufficient assurances on the changes Government will make as a result of the Committee’s report, and provides acceptably robust reasons where we have not adopted other of the report’s recommendations. Where we have committed to making amendments, these will be tabled at the earliest opportunity.  

25. I am copying this to members of the Delegated Powers and Regulatory Reform Committee, and have deposited it in the libraries of both Houses.  

July 2007  

Extract from the 11th Report from the Delegated Powers and Regulatory Reform Committee (Session 2006-07, HL Paper 126)  

Local Government and Public Involvement in Health Bill  

2. This 17-Part bill covers various topics related to local government. It contains numerous delegated powers, which are the subject of a memorandum from the Department for Communities and Local Government, printed at Appendix 2 [Not printed in this extract]. There are further delegations, or significant changes to existing powers, at clauses 117(6) and (7), 121 (new section 21A(11), 151 (new section 139BA(1) and (3)) and 186 (new section 57C(7)).  

Directions for single tier of local government — clause 2  

3. Clause 2 enables the Secretary of State to direct a principal authority to make a proposal for a single tier of local government. Although the department have addressed this power in their memorandum, we have not considered it because we do not consider that this power to direct has a legislative character within our terms of reference.  

Structural and boundary change — clauses 7, 10 to 13 and 15  

4. Clauses 1 to 6 set out a procedure for proposals for change from two tiers to a single tier of local government, as described in paragraphs 16 to 38 of the Explanatory Notes. The Secretary of State is empowered, by clause 7(1)(a) and (b), to implement the proposal, or an alternative proposal from the Boundary Committee for England, in either case with or without modifications. The implementation is by order subject to affirmative procedure.  

5. Clauses 8 and 9 set out a procedure for a review of local government areas by the Boundary Committee, following which the Committee may recommend boundary changes. A change might be the alteration of a local government area boundary, the abolition of a local government area or the constitution of a new area, but certain particular recommendations are prohibited by clause 8(4). The Secretary of State is  

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6 See Regulation 31 of the Local Authority (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) and Regulation 25 of the Local Authority (Capital Finance and Accounting) (Wales) Regulations 2003 (S.I. 2003/3239)
empowered by clause 10(1)(a) to implement the recommendation, with or without modifications. The implementation, as with clause 7, is by order subject to affirmative procedure.

6. Clauses 11 to 13 and 15 set out matters which may be included in orders under clause 7 or 10. The matters include some which are very significant indeed, but all are subject to the limitation that they must be for the purpose of implementing a proposal or recommendation. The matters include:

- constituting or abolishing local government areas;
- establishing a county council, district council or London borough council;
- dissolving an existing local authority;
- transferring functions from a county council to a district council and vice versa;
- altering the membership, etc. of public bodies in an affected area (subject to special provision for police areas at clause 13(4));
- dealing with electoral matters such as number of members, electoral areas, election and retirement of councillors and election of a mayor and executive (see clause 12(1)).

7. An order will need to include some or all of this to achieve proper implementation of a proposal or a recommendation. The extent of the powers in the bill are also in many respects similar to the existing statutory provisions in Part 2 of the Local Government Act 1992. Under that Act, the Electoral Commission makes recommendations to the Secretary of State for structural or boundary changes and the Secretary of State may give effect to them, with or without modifications, by order subject to affirmative procedure. We have considered these provisions carefully: the principle of effecting structural or boundary change by order is well established and we do not consider its continuance inappropriate.

8. An order under clause 7 or 10 will be local in nature and would therefore attract the hybrid instruments procedure in this House, which gives those whose private interests are adversely affected the opportunity to petition against the order. Clause 239(9) disapplies that procedure, as is already the case for orders under section 17 of the 1992 Act. **This is not inappropriate, but we draw the disapplication to the attention of the House, so that the House might satisfy itself that the alternative consultation procedure is adequate (see, for example, clause 6(4) about alternative proposals by the Boundary Commission).**

**Election dates — clause 60**

9. Section 37 of the Representation of the People Act 1983 prescribes the first Thursday in May as the ordinary day of local elections, though the Secretary of State may change this by order made before February in the preceding year. Clause 60 amends the 1983 Act to enable the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) by order to change the ordinary dates of local elections, as described in paragraph 78 of the memorandum, so that they are the same as the date of a European Parliamentary election, where the years coincide. The orders are subject to affirmative procedure which, in the case of orders by the Welsh Ministers, means affirmative in the National Assembly for Wales (NAW) (and not, as implied by paragraph 75 of the memorandum, affirmative at Westminster). As there is no option but to specify the same date as that for the European Parliamentary election, this is not inappropriate.
Appointed parish councillors — clause 78

10. Clause 78(4) inserts a new section 16A into the Local Government Act 1972, enabling a parish council to appoint councillors and clause 78(2) provides for the chairman and vice-chairman to be elected members. All matters relating to the numbers and term of office of, and participation in decision-making by, appointed councillors are left to regulations by the Secretary of State subject to negative procedure. The limited nature of parish councils’ responsibilities makes much of their regulation appropriate to the negative procedure but the composition of a council is important. 1972 Act (as amended by clause 78(3)) specifies the minimum number of elected councillors and the memorandum has not sufficiently justified the use of the negative procedure for a power which can be used to alter significantly the composition of the council. In particular, the balance between elected and appointed councillors could be crucial to the functioning of the council, as could the voting rights of appointed members and the purposes for which they may be treated as elected members. **As a minimum, any exercise of the power which permits a majority of the members to be appointed, or which enables an appointed member to be treated as an elected member for the purpose of the chairmanship or vice-chairmanship, should be subject to affirmative procedure.**

Parishes: community governance review — clause 88

11. The bill confers power in places on a local authority to legislate by order which is not a statutory instrument and has no specific requirements as to procedure, publicity etc. Examples are at clauses 53 and 77. Clause 88 also confers such a power to give effect to the recommendation of a community governance review. Recommendations which might be made in a review include the establishment of a new parish, aggregating parts of parishes, amalgamating parishes, abolishing parishes, whether a new parish should have a parish council and what electoral arrangements should apply to the parish council. An order made by the principal council may, in particular, vary or revoke any order under clause 7, clause 10 or section 17 of the 1992 Act. These are orders which are subject to affirmative procedure and are statutory instruments.

12. Whether a community governance review should be implemented at local or central level is a matter of policy for the House. If the House accepts the principle that the principal council should be fully empowered to implement the recommendations, then it would be unusual for there to be any parliamentary control over the council’s orders. The memorandum notes that such orders might be controversial (paragraph 137 of the memorandum) and it is for the House to decide whether it is content for the controversy to be dealt with at a local level.

13. Giving effect to recommendations is, as the memorandum suggests, likely to give rise to a need to vary orders made centrally which were expressly approved by both Houses. This raises certain issues, but we do not see any realistic alternative if full power is to be given to the principal councils and the Secretary of State is to have no involvement in the decision. **It is however inappropriate for an order of the council which varies or revokes an indexed and numbered statutory instrument to be subject to no formal requirements as to procedure or publicity (paragraph 136 of the memorandum): there should be appropriate, legally-enforceable publicity arrangements.**
Local area agreements — clause 106(7)

14. There is a Henry VIII power at clause 106(3) subject only to negative procedure. The power is explained at paragraphs 155 to 157 of the memorandum, it is appropriately limited and we do not consider it inappropriate.

Modification of enactments: Wales — clause 117

15. Section 6 of the Local Government Act 2000 enables the Secretary of State by order to amend any enactment (whenever passed) which requires a local authority to prepare a plan or strategy. These orders are subject to a super-affirmative procedure (sections 9 and 105(6)). Section 7 confers a similar, but much more limited power, on the NAW. In particular, the power extends only to enactments specified in an order by the Secretary of State, and not to all enactments whenever passed. Orders under section 7 were originally subject to NAW procedures.

16. Clause 117(6), which is not addressed in the memorandum, amends section 7 so as to confer the power on the Welsh Ministers, rather than the NAW. This is in keeping with the Government of Wales Act 2006. Clause 117(6) also widens the power so that it is the same as that conferred, in relation to England, on the Secretary of State (i.e. a power to amend any enactment whenever made). Clause 117(7) makes the orders by the Welsh Ministers subject to affirmative procedure at the NAW. But it does not, as a consequence of widening the power, apply a super-affirmative procedure at the NAW such as is to be found at clause 143(2) in relation to best value (see new section 17B). There thus appears to be a higher level of scrutiny at Westminster for orders by the Secretary of State than there is at the NAW for orders by the Welsh Ministers. We draw this anomaly to the attention of the House.

Procedure for byelaws — clause 130

17. Section 236 of the Local Government Act 1972 sets out a default procedure for byelaws, applicable where the byelaw enabling power prescribes no special procedure. The procedure provides, in particular, for the byelaws not to have effect until confirmed by a confirming authority (e.g. the Secretary of State). Clause 130 enables regulations subject to affirmative procedure to prescribe an alternative procedure. Paragraphs 192 to 194 of the memorandum explain how this power is proposed to be used. Although this power is significant, we do not consider it inappropriate.

Reports on performance — clause 158

18. There are Henry VIII powers subject only to negative procedure at new section 47A(5) and (6) of the Audit Commission Act 1998, inserted by clause 158(1), explained at paragraph 237 of the memorandum. We do not consider them inappropriate.

Ethical standards officers: disclosure — clause 192(4)

19. Section 62 of the 2000 Act gives ethical standards officers powers to require information in connection with an investigation. Somebody failing, without reasonable excuse, to comply with a requirement may be prosecuted. Section 63 restricts disclosure of information obtained by ethical standards officers under section 62. The circumstances in which disclosure may be made are set out in the Act.
20. Clause 192(4) (new paragraph (j) of section 63(1)) enables the Secretary of State, by order subject to negative procedure, to specify additional persons to whom disclosure may be made and the purposes for which it may be made. There is no limitation on the persons or the purposes and the memorandum (paragraph 247) does not justify the provision. **We consider that orders authorising further disclosure of information obtained in the exercise of compulsory powers should be subject to affirmative procedure unless limited in some way (e.g. to those performing statutory or public functions).**

**Adjudication panel — clause 196**

21. Section 66 of the 2000 Act enables regulations subject to negative procedure to provide for the way in which matters referred to a monitoring officer are dealt with. The regulations may, in particular, enable an authority’s standards committee, following its consideration of a monitoring officer’s report, to take action prescribed by the regulations.

22. Clause 196 inserts a new section 66A, which builds on section 66, into the 2000 Act. Section 66A enables the regulations:

- to enable the standards committee, where it considers that action it could take is insufficient, to refer the case to the president of the Adjudication Panel for England for a decision by members of the panel;
- to deal with the appointment, composition and procedure of the panel;
- to specify what action may be taken against the person;
- to confer a right of appeal.

The Adjudication Panel and the case tribunals drawn from members of the Panel are the subject of Chapter 4 of Part 3 of the 2000 Act.

23. Clause 196 confers an open-ended power as to how the more serious cases are intended to be dealt with. We do not agree with the Government’s justification for proposing the negative procedure: that the contents of the regulations will be “mainly procedural, ancillary or incidental” (paragraph 257 of the memorandum) **We consider the instruments specifying what action is to be taken should be subject to the affirmative procedure, whereas truly procedural matters can appropriately be subject to negative resolution.**

**Case tribunals — clause 199**

24. Section 79 of the 2000 Act is about the decisions of case tribunals of the Adjudication Panel. It specifies that where the tribunal decides there has been a breach of the code of conduct, it must decide whether the breach warrants suspension or disqualification. The Act sets out maximum periods of suspension and disqualification.

25. Clause 200 limits section 79 to Wales. Clause 199 inserts a new section 78A which deals with England. Section 78A does not set out the full extent of the types of sanction that may be imposed. Instead, it enables regulations (subsections (4) and (5)) subject to negative procedure to authorise action which may be taken. Action can include, but is not limited to, censure, suspension “for a limited period” or disqualification (maximum 5 years). **We consider that the affirmative procedure would be more appropriate because the list of sanctions is not exhaustive.**
Entities controlled by local authorities — clause 213

26. Clause 213(1) enables the Secretary of State, by order subject to negative procedure, to require, prohibit or regulate the taking of specified actions by entities connected with a local authority. Clause 213(3) confers a similar power on the Welsh Ministers (subject to negative procedure at the NAW). The orders in either case may require, prohibit or regulate the taking of specified actions by a local authority in relation to an entity connected with the authority or by certain members or officers of the local authority. This power is wider than those which a Secretary of State currently has in relation to companies under the control of a local authority; indeed, it is difficult to discern the Government’s policy from the clause. Accordingly, we consider that this power should be subject to the affirmative procedure.

27. The scope of the power is limited to “actions by entities connected with a local authority”. “Entity” is defined in subsection (8) as an entity, whether or not a legal person, and “connected” is defined in subsection (7). The latter gives limits to the power, but subsection (6) provides that an order may identify a description of entity for the purposes of the order not only by reference to a document in existence when the order is made, but also by reference to that document as it has effect from time to time (i.e. with future amendments) or in a re-issued form. While this avoids the need to amend the order when the document is revised, it in effect delegates to the producers of the document the power (subject to no parliamentary scrutiny) to change not simply what must be done under an order but the very description of entity to which the order applies at all. This is inappropriate. If, as the memorandum (paragraph 276) suggests, the purpose of subsection (6) is to allow ambulatory references to a particular document (the Code of Practice on Local Authority Accounting) then we recommend that the provision should be so limited and should not allow ambulatory references to any document whatsoever.

Clauses 214(4), 218(3) and 219(3)

28. A similar point to that on clause 213(6) also applies to these provisions.

Wales — clause 234 and Schedule 17

29. The provision in clauses 234 and Schedule 17 is explained at paragraphs 341 to 346 of, and Annex A to, the memorandum. It is in line with the Government of Wales Act 2006 under which the “Fields” in Schedule 5 may be filled with matters either by primary legislation or by Order in Council. Whether the particular matters listed in Schedule 17 to this bill should be the subject of enhanced legislative competence for the NAW is a matter of policy for the House.
APPENDIX 4: UK BORDERS 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 the careful consideration given to the UK Borders Bill by the Delegated Powers and Regulatory Reform Committee, as set out in the Committee’s 10th Report of Session 2006-2007. This letter details how the Government proposes to take forward the points raised.

Biometric registration regulations – clauses 5 to 8

Biometric registration clause 5(7)

2. I note the Committee’s view that the power in clause 5(7) should be subject to the affirmative procedure. The Report stated that it was not clear from the memorandum (paragraphs 13 and 14) to what extent this enables information to be required by immigration rules.

3. In time, every application for leave to remain will have to be accompanied for an application for a Biometric Immigration Document (BID). Under a forthcoming EC Regulation, which will amend EC regulation 1030/2002 on the uniform format for residence permits, the UK will have to issue a biometric card as the grant of leave. In the UK, the intention is that we will rely on the biometric registration provisions in the UK Borders Bill to fulfil our European obligations. It is our intention to combine the application for a BID with the immigration application form used to apply for leave. This will mean the applicant will only have to provide non-biometric information relevant to their applications once, in a combined procedure.

4. At present, the provision of information as part of an application for leave to remain is governed by section 50 of the Immigration, Asylum and Nationality Act 2006. This enables the Secretary of State to require the provision of information either through the immigration rules or administratively. Where he does so he must also make provision in the immigration rules in respect of the consequences of failing to comply with such a requirement. Section 50 replaced the previous provision – section 31A of the Immigration Act 1971 - which allowed procedural steps in respect of applications to be set out in regulations (negative procedure). This amendment was made because it was considered that this provision provided a suitable mechanism for the provision of information relevant to an application, and a simpler Parliamentary procedure was suitable for the non-controversial requirement of requiring a person who applies for leave to provide information relating to that application. Non-biometric information currently provided as part of an application for leave is recorded on the leave vignette which is issued to successful applicants, and the information is also held centrally. This is an administrative practice incidental to the operation of immigration control under the Immigration Act 1971, and a requirement of EC Regulation 1030/2002.

5. When the biometric registration provisions come into force, there will be a considerable overlap in the information required for the leave application and the application for a BID (because the BID itself will be the way the leave is granted). It is likely that the non-biometric information required for the combined applications will be almost identical (such as name, date of birth, place of birth, nationality, gender, basis for leave application). In the majority of instances, it would make no sense to require the applicant to complete two separate forms with the same details
on them. And while the same information and documents may be required for both the application for leave and the application for the BID, in practice the applicant will only need to send that information to the Border and Immigration Agency as part of the one combined application.

6. The purpose of section 50 of the 2006 Act would be undermined if the information required for the “leave” part of the application could be changed through rules or with no Parliamentary procedure, but the same information required for the BID part of the application could only be changed through affirmative regulations. Affirmative procedure would apply even more stringent scrutiny than the negative procedure provided for under the old section 31A of the 1971 Act. For this reason, the combined effect of clause 5(7) and clause 15(2) is to ensure the same regime applies to the provision of non-biometric information as already applies to the provision of this information when a person applies for leave.

7. Clause 5(7) enables the approach taken in section 50 of the 2006 Act to be maintained. On a practical level it means those applying for leave to remain need only make one combined application. We would lose the existing flexibility to amend the application procedures were we to accept the Committee’s recommendation to subject the clause to the affirmative procedure.

**Cumulative effect of the delegations in the clauses**

8. I have considered the Committee’s helpful comments about the cumulative effect of the all the delegations in the biometric registration clauses. I will be tabling several amendments that should limit, where appropriate, the scope of the delegations.

9. The Committee considered clause 5(1)(b)(iii) to be quite broad in its powers as it does not specify the circumstances when the BID should be used. It is anticipated that the BID will be used initially by prospective employers and those providing public services (such as the Department for Work and Pensions) where immigration status is a relevant consideration. But there may be other circumstances where a question arises about nationality or immigration where a person should rely on the secure BID to establish their status. This could be, for example, where a person applies to naturalise or register as a British citizen. Any changes on the use of the card will have to be specified in regulations that will be subject to the affirmative procedure. As the roll-out for requiring those subject to immigration control to apply for a BID will be undertaken incrementally, so too will the roll-out of the circumstances in which the BID will be used. We therefore consider it to be appropriate to retain the flexibility to define the list of circumstances in secondary legislation.

10. In respect of clauses 5(2)(g) and (h), I will be tabling amendments so that the clauses more closely reflect sections 10 and 11 of the ID Cards Act. We will therefore be specifying on the face of the Bill the circumstances in which the Secretary of State can suspend or cancel a BID (Clause 5(2)(g)) and we will be more explicit about the circumstances in which a BID holder is to notify the Secretary of State of a change in circumstances (Clause 5(2)(h)). In addition, we also intend people holding a BID to notify the Secretary of State of a change in circumstance which may affect their immigration status. A change in immigration status may also be grounds for the Secretary of State to suspend or cancel the document (for example, if the person no longer has the leave which the document says they have).

11. With regard to the Committee’s concerns about clause 5(2)(k), it has always been our intention to only require the surrender of immigration related documents, which
would include vignettes granting leave, for example. Therefore, I will be tabling an amendment to make this clear on the face of the Bill.

12. Turning to the Committee’s concerns about clause 5(3)(d), there will be some cases where the Secretary of State will already hold information on an individual and would like to use it for subsequent applications, for example where a person with indefinite leave to remain is seeking to replace an expired document. The Committee’s concern about an applicant's ability to check records that the Border and Immigration Agency holds on them is covered by existing (subject access) provisions contained within the Data Protection Act 1998. Those provisions give individuals a right of access to their own personal data held by ‘data controllers’ and will therefore allow individuals to check whether their personal records are accurate.

13. I am grateful to the Committee for bringing clauses 5(3)(e) and 5(3)(f) to our attention. We have given this matter further consideration. The Committee recommended following section 126 of the 2002 Act and specifying on the face of the Bill that PACE codes will apply to authorised persons registering biometrics. Having looked carefully at the PACE Codes, we do not consider them to be appropriate for the biometric registration provisions, which are designed to follow closely the spirit of the Identity Cards Act rather than previous immigration legislation.

14. There is no provision in the Identity Cards Act that requires authorised persons to have regard to a code when registering a person’s biometric samples, such as fingerprints. This is because we did not want the legislation to have sense of “criminality” or for applicants to feel they were being treated as “suspects”. The same applies to this legislation, as it is not our intention to “criminalise” foreign nationals, but to secure their identity. However, we will publish practice guidance to which persons authorised to register biometrics must adhere.

15. In the light of the Committee’s Report, I intend to amend the Bill so that clauses 5(3)(e) and 5(3)(f) are removed. This is to enable the biometric measures contained within this Bill to follow the provisions in the Identity Cards Act more closely.

16. I would also like to inform the Committee of the amendments I will be tabling to bring more clarity to clause 8. Specifically I will be making it clear that the provisions of the clause only relate to biometric information collected and that the clause does not limit the Border and Immigration Agency’s existing powers to share information. Related to the Committee’s particular concerns, I intend to set out on the face of the Bill, in so far as we is possible, the non-immigration purposes for which biometric information will be ‘used’, for example for crime prevention and detection purposes. Alongside that I will also be including provision to add to those non-immigration purposes in secondary legislation (subject to affirmative resolution) so that should new ‘uses’ for this information come to light those purposes can be added as necessary.

17. It is important to note that the Data Protection Act 1998 sets out a number of principles for ‘processing’ (encompassing ‘using’) personal data and that the Border and Immigration Agency is required to comply with that Act. Therefore in addition to the steps I am taking to clarify clause 8, I want to stress that the Department will also comply with the requirements of the Data Protection Act and Article 8 of the Human Rights Act in ‘using’ information gathered under biometric registration provisions of the Bill.

18. I acknowledge the concerns the Committee has raised about clause 7(2) and the broadness of the possible sanctions. It has never been our intention to apply the most serious types of sanction, such as curtailment of leave or refusal of an
immigration application, except where there has been a serious failure to comply
with the legislation and the Secretary of State considers a civil penalty is unlikely to
enforce compliance. However, we have decided to take steps to address the
Committee’s concerns.

19. The civil penalty scheme will be operated under the terms of a code of practice. The
code will also detail the operation of the other sanctions. To give Parliament greater
scrutiny of the code before it comes into effect, I will be tabling an amendment to
clause 13(5) that will make the arrangements for issuing and amending the code
closer to the Identity Cards Act. This will mean that the code will be subject to the
affirmative procedure when it is first laid, and for subsequent amendments it will be
subject to the negative resolution.

Points-based applications: evidence – clause 19

20. I am grateful to the Committee for its views on clause 19. We have given the matter
further consideration and I will be tabling an amendment to transfer to the Lord
Chancellor the power to specify the circumstances in which evidence is to be treated
as having been submitted in support of, and at the time of making, a points-based
application. The amendment will allow the Lord Chancellor to specify these
circumstances in the Asylum and Immigration Tribunal’s Procedure Rules.

21. I think the amendments we are proposing, as detailed above, will result in an
improved Bill and I would like to thank the Committee again for its assistance.

22. I am copying this letter to members of the Delegated Powers and Regulatory
Reform Committee and placing copies in the House libraries.

June 2007