HOUSE OF LORDS

Delegated Powers & Regulatory Reform Committee

7th Report of Session 2006–07

Greater London Authority Bill

House of Lords Bill [HL]

House of Lords Bill (Amendment) Bill [HL]

Northern Ireland (St Andrews Agreement) Act 2007

Offender Management Bill

Royal Commission (Slavery) Bill [HL]

Statistics and Registration Service Bill

Torture (Damages) Bill [HL]

Government amendments:

Welfare Reform Bill

Government response:

Justice and Security (Northern Ireland) Bill

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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 inappropri ately 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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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.
Seventh Report

GREATER LONDON AUTHORITY BILL

1. This 11-part bill makes provision about the Greater London Authority (GLA) and its functional bodies. The delegated powers in the bill are explained in a memorandum from the Department for Communities and Local Government printed at Appendix 1. There are lists at Annex A to the memorandum of the powers to make orders and regulations and at Annex B of powers of the Secretary of State to give directions. When considering the bill which became the Greater London Authority Act 1999, “the GLA Act”, the Committee concluded that the Secretary of State’s powers to give directions to the Mayor, though significant, were not legislative powers and we agree.

2. There are five Henry VIII powers in the bill:
   - clause 4 (new section 60A(5) of the GLA Act);
   - clause 40 (new section 361B(8) of the GLA Act);
   - clause 47(5) (new subsection (11) in section 376 of the GLA Act);
   - clause 49 (new section 401A(7) of the GLA Act);
   - clause 56(9), read with clause 50(2).

3. Unusually, all of these powers are subject to negative procedure only. We consider this justified in the cases of clauses 4, 40 and 47(5), which are limited in their scope and/or their effect on the working of the bill, but we report below on clauses 49 and 56(9)/50(2).

Common provision of administrative, professional and technical services — clause 49

4. Clause 49 inserts a new section 401A into the GLA Act. It is explained at paragraphs 74 to 76 of the memorandum and paragraph 121 of the Explanatory Notes. Section 401A enables the GLA and its functional bodies to enter into arrangements for the provision of administrative, professional or technical services by one to another and to establish joint committees for the purpose. The functional bodies are Transport for London, the London Development Agency, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority.

5. Section 401A(3) enables the arrangements to include arrangements for the discharge by one body, on behalf of another, of any “functions of that other which are of an administrative, professional or technical nature”.

6. The Secretary of State may by order “amend this section so as to extend or restrict the services or functions to which it applies”. Accordingly, this power would appear to enable the Secretary of State to extend the functions referred to in subsection (3) to those which are by no means “back office” as described in the Explanatory Notes and we therefore consider that the affirmative procedure would be more appropriate.
Incidental, consequential and similar provision — clauses 56(9)/50(2)

7. Clause 50(1) provides that “any power conferred on the Secretary of State by this Act to make an order” includes power to make incidental, consequential, supplemental or transitional provision or savings. Clause 50(2) provides that this includes power to amend present or future Acts. Clause 50(4) provides that an order which contains provision made under clause 50(2), and which is not subject to any requirement imposed elsewhere for the order to be subject to affirmative procedure, is subject to negative procedure.

8. In fact, as paragraph 77 of the memorandum explains, the only power to make orders conferred in the bill (as opposed to in Acts amended by the bill) is the power at clause 56 to appoint days for the commencement of provisions of the bill, including the power to appoint different days for different purposes.

9. The procedure for commencement orders is thus:

- if the order only appoints a day or days, it is subject to no procedure;
- if the order contains incidental, consequential, supplemental or transitional provisions or savings which do not involve amending an Act, it is also subject to no procedure;
- if the order contains incidental, consequential, supplemental or transitional provisions or savings which do involve amending an Act, it is subject to negative procedure;
- if the commencement order is combined in the same instrument with an order made under a different Act (e.g. the GLA Act) and which is subject to affirmative procedure, then the commencement order too is subject to affirmative procedure, regardless of whether or not it contains incidental etc. provision.

An unusually complex arrangement for a commencement order.

10. In our 3rd Report for 2002-03, we specifically addressed the issue of Henry VIII powers to make incidental, consequential and similar provision and concluded that there should be a presumption in favour of the affirmative procedure for such powers. We also consider that there must be a strong justification for any power to amend future Acts; such a power does not appear in the equivalent provision of the GLA Act and the need for this power has not been demonstrated in this case. In this instance we could accept the provision in so far as it corresponded to provision in the GLA Act and amounted to no more than applying existing provisions of the GLA Act to this bill, which consists very largely of textual amendments to that Act. This would mean the removal of power to amend future Acts. But, if clause 50(2) remains as it is, we recommend that orders containing provision under clause 50(2) should be subject to affirmative procedure.

Directions and guidance by the Secretary of State

11. The GLA Act already requires the Mayor to prepare various strategies, such as a transport strategy, an air quality strategy and a culture strategy. The Secretary of State is given various powers to direct the Mayor about the strategies, most notably to prevent inconsistency between the strategies and national policy. The direction-giving powers at clauses 22 (new section
309H(1) of the GLA Act), 27 (new section 328B(2) of the GLA Act) and 28 (new section 333B(4) of the GLA Act) follow this pattern. In the context of the 1999 Act, this is not inappropriate and we do not consider that any parliamentary procedure is required. We note however that there are places where the distinction between (binding) directions and (non-binding) guidance is blurred.

12. For instance, clause 36 enables the Secretary of State to issue guidance to waste authorities about what is meant by acting in accordance with the Mayor’s municipal waste management strategy. But the authorities are required to “act in accordance with” the guidance, and not merely to have regard to it. So the guidance is very similar to a direction.

13. Similarly, clause 39 (new section 361A(2)(c) and (3)(b) of the GLA Act) enables the Secretary of State to give directions or guidance to the GLA about the performance by the Mayor or Assembly of certain duties about climate change. The Mayor and the Assembly are required to “comply with” both the guidance and the directions and not merely, so far as the guidance is concerned, to have regard to it.

14. We note also that in clause 28, new section 333A(6) enables the Secretary of State to direct matters to be contained in the housing strategy. With most of the other strategies under the GLA Act, this is a matter for (non-binding) guidance, though in the case of the spatial development strategy, any mandatory content is dealt with by regulations subject to negative procedure.

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**HOUSE OF LORDS BILL [HL]**

15. This private member’s bill does not delegate legislative power.

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**HOUSE OF LORDS (AMENDMENT) BILL [HL]**

16. This private member’s bill does not delegate legislative power.

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**NORTHERN IRELAND (ST ANDREWS AGREEMENT) ACT 2007**

17. The bill for this Act was taken through all of its stages in both Commons and Lords on 27 March and received Royal Assent that day. We did not meet specially to consider the bill because it did not delegate legislative power.
OFFENDER MANAGEMENT BILL

18. This bill makes new arrangements for the provision of probation services (in Part 1) and contains provisions about prisons (in Part 2) and the management of offenders more generally (in Part 3). There are delegated powers to make orders, regulations or rules at clauses 1(5), 5(1) and (3)(c), 10(2), 11(2)(h) and (7), 12, 15(2) (new section 86B(2)), 19 (new section 40A(5) and (6)), 25(6), 30(7)(c), 35 and 38. There are extensions of existing powers at clause 13(1) and (2), 20 (new section 40E(1)(a)) and 28(3) and paragraph 6(2) of Schedule 4. There are powers to make property and staff transfer schemes in Schedule 2. A memorandum from the Home Office about the powers in the bill is printed at Appendix 2.

19. The powers at clauses 11(7), 19 (new section 40A(6)) and 35(2)(a) are Henry VIII powers and subject to affirmative procedure.

The probation purposes — clause 1

20. Clause 1 defines “the probation purposes” and subsection (5) enables the Secretary of State to extend the purposes by order subject to negative procedure. Clause 2 requires the Secretary of State to make sufficient provision for the probation purposes. The power at clause 1(5) is similar to that at section 1(3) of the Criminal Justice Act 2000. Without this precedent, we would have been inclined to consider that this power should be subject to the affirmative procedure but we do not consider the negative procedure inappropriate.

Power to establish probation trusts — clause 5

21. Clause 5 enables the Secretary of State by order to establish and dissolve probation trusts. The purposes for which each trust is to be established is to be specified in the order. The purposes must include making or performing contracts with the Secretary of State and may include any of the purposes set out in clause 5(3)(a) or (b) or in regulations subject to negative procedure under clause 5(3)(c). We consider that it would be desirable for the bill explicitly to restrict the purposes which may be added under regulations to probation purposes as defined in clause 1, especially in view of the negative procedure. While we accept that there must be an implied limitation of some sort to the apparently open-ended extent of clause 5(3)(c), the bill does not confine the purposes which may be specified to those which contribute to the achievement of any purpose mentioned in clause 2(1). If an express limitation of this sort were included in the bill, the negative procedure would be sufficient. Otherwise, we consider that the affirmative procedure should apply.

22. The memorandum says (paragraph 6) that trusts will be the public sector vehicle for the delivery of probation services but neither the memorandum nor the Explanatory Notes give any information about the likely number, size or geographical distribution of the trusts: these are important considerations in determining whether the orders creating them should be subject to a parliamentary procedure.

23. Orders under clause 5 are not statutory instruments and are not subject to a Parliamentary procedure. The memorandum suggests this is appropriate as in due course trusts may need to be established or dissolved for commercial
reasons. We are not persuaded by this justification: Parliament might well wish to retain some control over the establishment of a statutory corporate body which is subject to the control of the Secretary of State (who appoints all the appointed members – see paragraph 3 of Schedule 1 – and has power of direction over it – see paragraph 14 of Schedule 1) and which will deliver essential services.

24. Parliament has in the past, however, accepted no parliamentary scrutiny for the establishment of public service delivery bodies (e.g. NHS Trusts and Primary Health Care Trusts, which are established by order which is a statutory instrument but subject to no procedure) particularly when a large number of bodies will be created. The provision in the bill may not be inappropriate but, because we have no information on the likely size and number of trusts, we cannot make a recommendation and so we draw the matter to the attention of the House so that the Minister might be required to justify the lack of parliamentary procedure in Committee.

Disclosure for offender management purposes — clause 11

25. Clause 11 provides for disclosure of information between those listed in subsection (1) and those listed in subsection (2) (which includes any person specified in regulations subject to affirmative procedure). Subsection (6)(b) provides that clause 11 does not authorise disclosure of information in contravention of any provision in an Act or subordinate legislation. But subsection (7) enables the Secretary of State, by order subject to affirmative procedure, to amend or repeal a provision of an Act (or of subordinate legislation) so as to enable a disclosure which would otherwise be prevented by subsection (6)(b). This power is sufficiently broad to enable overriding the Data Protection Act 1998 (contrast clause 51 of the Statistics and Registration Service Bill) and power to amend future Acts.

26. We look especially carefully at Henry VIII powers which enable the amendment of future Acts, as the full scope of the power cannot be ascertained when it is given. Power to amend future Acts requires the sufficient justification, which has not been provided on this occasion. Any future enactment which would otherwise prevent disclosure because of subsection (6)(b) can itself say whether it can be overridden as respects information to which clause 11 applies. We do not find the case for a power of amendment of future Acts to have been made out. In other respects, we do not consider clause 11 inappropriate in the light of the affirmative procedure provided.

Power to repeal clause 4 — clause 12

27. Clause 4 restricts to probation trusts and other public bodies probation provision which is referred to in clause 2(1)(a) and (b) and which relates to assisting a court in taking decisions about convicted persons.

28. Clause 12 enables the Secretary of State to repeal clause 4 (or repeal it for certain purposes) by order subject to affirmative procedure. The effect of the order will be to open up the provision of the particular services to non-public sector providers. Whether the House considers the limitation in clause 4 to be fundamental to the bill is a matter of policy. The power in clause 12 is
specific and subject to affirmative procedure and we do not consider it inappropriate as a matter of delegated powers.

**Powers of authorised persons to perform custodial duties and search prisoners — clause 15**

29. New section 86B(2) enables the Secretary of State to specify by order certain types of activity the doing of which would otherwise involve the performance of a custodial duty. At present any such task involving the performance of such a duty can only be carried out at contracted out prisons by prisoner custody officers or prison officers temporarily attached to the prison if they are authorised by the director of the prison to do so. However, once specified in an order, a certain task can be authorised to be done by a member of staff who is not a prisoner custody officer or temporarily attached prison officer. The types of activity which might be specified are set out in paragraph 29 of the memorandum and *we consider that it would be desirable for the power to be explicitly limited in this way.*

**Conveyance of prohibited articles into or out of prison — clause 19**

*Lists*

30. Section 40 of the Prison Act 1952 makes it an offence to bring spirits or tobacco into prison. Clause 19 replaces this with a different set of provisions:

- clause 40B makes it an offence to bring etc. a “List A” article into a prison without authorisation (maximum penalty 10 years’ imprisonment and/or a fine);

- clause 40C(1) makes it an offence to bring etc. a “List B” article into a prison without authorisation (maximum penalty 2 years’ imprisonment and/or a fine);

- clause 40C(2) makes it an offence to bring etc. a “List C” article into a prison without authorisation (maximum penalty level 3 fine – currently £1,000).

31. Lists A and B are set out in new section 40A. List C is to be prescribed by prison rules (which paragraph 34 of the memorandum indicates refers to rules under section 47 of the 1952 Act made by the Secretary of State and subject to negative procedure). Section 40A(6) contains a Henry VIII power for the Secretary of State by order to alter Lists A and B. Any order which includes an alteration to List A is subject to affirmative procedure. An order which alters List B only is subject to negative procedure. An alteration to List B is significant, since a contravention of section 40C(1) carries a maximum penalty far higher than that provided for a contravention of section 40C(2) (List C items as set out in prison rules). However, we realise that there is considerable precedent for a maximum penalty of this level to be attracted by subordinate legislation subject only to negative procedure. We do not thus consider these arrangements inappropriate but we note that the memorandum does not address the need for these Henry VIII powers and addresses the level of parliamentary scrutiny in one sentence at the end of paragraph 33. *We thus draw these powers to the attention of the House so that the House might require the Minister to justify their delegation.*
Authorisations

32. Under section 40E(1) and (2) (including as applied by section 40C(7)) inserted by clause 20, the Secretary of State may give an authorisation relating to List B or List C articles. These authorisations need not be given only to individuals: they may be given to persons generally or to descriptions of person and for all prisons or for descriptions of prisons. Authorisations by the Secretary of State which relate to all prisons or to descriptions of prison may be given either in prison rules (subject to negative procedure) or by the Secretary of State administratively, i.e. the Secretary of State has a choice. The option of granting an authorisation by prison rules may recognise the fact that broad authorisations have, in effect, the legislative character of a general exemption. But the bill does not require general authorisations to be given by rules, nor does the memorandum explain in what circumstances in each of the different methods will be used. **We draw the position to the attention of the House so that the Minister might be asked to explain and justify in what circumstances she would propose to grant authorisations administratively and when by prison rules.**

33. Under section 40B(2)(a) and (3)(a) and (b) the Secretary of State may give an authorisation relating to List A articles. While an authorisation cannot cover persons generally it can cover descriptions of person (not just individuals), and all prisons or descriptions of prison and descriptions of acts (not just particular acts). The only formality required for even a wide authorisation, which could border on the legislative, is that the authorisation be in writing or recorded in writing. The option of prison rules seems not to be available. **We similarly draw this to the attention of the House.**

Effect of polygraph condition — clause 25

34. Clauses 24 and 25 enable the Secretary of State to include a “polygraph condition” in the licence of certain sex offenders being released on licence. Clause 25 describes the polygraph condition. It is a condition which, in particular, requires the released person to participate in polygraph sessions at specified times. The sessions involve a polygraph examination (described in clause 25(3)) and interviews.

35. Clause 25(6) provides for the Secretary of State to make rules about the conduct of the polygraph sessions. The rules may cover such matters as the qualifications of the polygraph operator, record keeping and reports. The rules are not made by statutory instrument and are not subject to a parliamentary procedure.

36. Clause 25 is very similar to clause 48 of the Management of Offenders and Sentencing Bill which the Government introduced in the 2004-05 session and which did not reach the statute book due to the dissolution of Parliament. Under that bill however, the equivalent rules were to be made by statutory instrument subject to negative procedure and in the memorandum for the Committee at that time the Government expressed the view that “negative resolution is thought to provide an appropriate level of scrutiny”\(^1\). The memorandum for this bill does not address clause 25(6) and so we do not know why the Government have revised their opinion of the appropriate

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procedure. Nonetheless, we recommend that the rules be made by statutory instrument subject to negative procedure.

Commencement of polygraph condition provisions — clause 38
37. The commencement provisions for clauses 24 and 25 (polygraph condition) are unusual. If a commencement order brings the clauses into force only in relation to an area (as opposed to the whole of England and Wales) and only for a specified period, it is subject to no parliamentary procedure. But any other order bringing anything in clause 24 or 25 into force is subject to affirmative procedure. The memorandum explains that this is to enable the polygraph-testing provisions to be piloted, with Parliament being able to debate and, if necessary, vote on any national application of the provisions in the light of the pilot scheme(s). This does not seem to us to be inappropriate.

ROYAL COMMISSION (SLAVERY) BILL [HL]
38. This private member’s bill does not delegate legislative power.

STATISTICS AND REGISTRATION SERVICE BILL
39. Part 1 of this bill establishes a Statistics Board (“the Board”) and makes provision about its functions. Part 2 is about offices and office-holders in the registration service. A Memorandum from the Treasury, printed at Appendix 3, explains the delegations in the bill. There is also a transfer of an existing regulation-making power as respects Wales and Scotland at paragraph 3 of Schedule 1.

Delegation of functions to the Board — clause 22
40. Clause 22 enables a Minister of the Crown by order to delegate to the Board any of his functions relating to the production of statistics. This power is essentially administrative and the order is subject to no Parliamentary procedure. But clause 22(4) enables the order to include consequential or incidental provision which may include amending any enactment. Although the scope of the power is very limited, we consider that orders under clause 22 should be subject to negative procedure if they amend an Act of Parliament.

Power to authorise disclosure to the Board — clauses 44 to 50
41. Each of clauses 44 to 46 and 48 to 50 creates a power to make regulations authorising the disclosure of information between public authorities (defined in clause 64) and the Board. Clause 47 creates a power to make regulations authorising use of information by the Board. In each case the regulations may amend an Act of Parliament. Regulations under clauses 44, 47 and 48 (which are made by the Treasury) are subject to affirmative procedure at Westminster. Regulations under clauses 45 and 49 (which are made, with the consent of the Treasury, by Scottish Ministers) are subject to affirmative
procedure in the Scottish Parliament. Regulations under clauses 46 and 50 (which are made, with the consent of the Treasury, by a Northern Ireland Department) are subject to affirmative resolution under Northern Ireland arrangements.

42. The limitations on the powers are summarised at paragraph 29 of the memorandum. In addition, there is a “public interest” test in each case (see clauses 44(9)(b), 45(8)(b), 46(8)(b), 47(5)(b), 48(9)(b), 49(8)(b) and 50(8)(b))

43. Under clauses 44(7)(b), 45(6)(b) and 46(6)(b) regulations authorising disclosure by a public authority to the Board may, for consequential or supplementary purposes, authorise further disclosure by the Board (whether or not to a public authority). Similarly, under clauses 48(7)(b), 49(6)(b) and 50(6)(b), regulations authorising disclosure by the Board to a public authority may, for consequential or supplementary purposes, authorise further disclosure by the public authority (whether or not to another public authority).

44. The Government have made the case for each of these delegations and we do not consider them inappropriate.

TORTURE (DAMAGES) BILL [HL]

45. This private member's bill makes provision for actions for damages for torture. The only delegated power is that conferred by clause 7 to make a commencement order subject, as usual, to no parliamentary procedure. There is nothing in the bill which we wish to draw to the attention of the House.

WELFARE REFORM BILL: GOVERNMENT AMENDMENTS

46. We reported on this bill in our 5th Report (HL Paper 44) and published the Government's response in our 6th Report (HL Paper 61). The Government have now invited us to consider amendments on Third Reading: amendment Nos 1, 2, 8 and 9 on the marshalled list (HL Bill 54-I), now agreed to by the House. The Department for Work and Pensions has provided a supplementary memorandum, printed at Appendix 4. There is nothing in the amendments which we wish to draw to the attention of the House.

JUSTICE AND SECURITY (NORTHERN IRELAND) BILL: GOVERNMENT RESPONSE

47. We reported on this bill in our 6th Report (HL Paper 61) and the Government have now responded by way of a letter to the Chairman from Paul Goggins MP, Parliamentary Under Secretary of State at the Northern Ireland Office, printed at Appendix 5.
APPENDIX 1: GREATER LONDON AUTHORITY BILL

Memorandum by the Department for Communities and Local Government

Introduction


2. The Bill contains 14 individual provisions for delegated powers. All but one are new powers; one amends the scope of an existing power. All of the delegated powers are exercisable by the Secretary of State by statutory instrument. A summary of the delegated powers is set out at Annex A. In addition, 12 provisions in the Bill give the Secretary of State powers to issue directions. These are also set out and explained in this memorandum. A summary of the powers of direction is included at Annex B.

3. For completeness, the narrative in this memorandum describes each part of the Bill. Where there are no legislative powers conferred on the Secretary of State, then it is noted in the text.

4. 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

5. The GLA comprises a directly elected Mayor and a separately elected Assembly of 25 members. The Authority was established by the Greater London Authority Act 1999 and the first elections took place in 2000.

6. In November 2005, the Government consulted on proposals to grant additional powers to the Authority. The proposals covered a wide range of areas, but focused on housing, skills, planning and waste. In July 2006, the Government announced the final package of additional powers for the Mayor and Assembly. The proposals include new lead roles for the Mayor in housing and adult skills in London and additional strategic powers in a wide range of policy areas including planning, culture, health and climate change. The Mayor will also have a strengthened role in managing London’s waste and stronger powers over the Authority's functional bodies\(^2\) The Assembly’s role is enhanced to complement the additional powers of the Mayor. The Government’s Policy Statement can be read on the CLG website at: www.communities.gov.uk/glapowers.

7. The Bill gives effect to most of the additional powers requiring primary legislation for their implementation. The Mayor’s new role in relation to adult skills and employment in

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\(^2\) The four functional bodies are Transport for London (TfL); the London Development Agency (LDA); the Metropolitan Police Authority (MPA) and the London Fire and Emergency Planning Authority (LFEPA).
London is included in the Further Education and Training Bill currently before Parliament.

8. The GLA Bill was introduced into the Commons on 28 November 2006. A copy of the Delegated Powers Memorandum was submitted to the Delegated Powers and Regulatory Reform Committee that day. The Bill was not amended at Commons Committee stage. Twelve largely minor and consequential Government amendments were accepted at Report stage. None of these included additional delegated powers provisions.

The Delegation of Powers

9. In deciding whether the 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
- the precedent set by the 1999 Act.

Overview

10. The Bill contains 11 Parts, these are:

- Part 1 - General Functions of the Authority
- Part 2 - Transport
- Part 3 - The London Development Agency
- Part 4 - Health
- Part 5 - The London Fire and Emergency Planning Authority
- Part 6 - Housing
- Part 7 - Planning
- Part 8 - Environmental Functions
- Part 9 - Culture, Media and Sport
- Part 10 - Miscellaneous and General
- Part 11- Supplementary Provisions

11. It also contains two Schedules. These are:

- Schedule 1 - Confirmation hearings etc: Schedule 4A to the GLA Act 1999
- Schedule 2 - Repeals

12. Further descriptions of the relevant Parts are given in the commentary on delegated powers below, and also in the Explanatory Notes that accompany the Bill.

The Bill

Part 1: General Functions of the Authority

13. This Part of the Bill strengthens the role of the Assembly to balance the additional powers of the Mayor; makes more robust the arrangements for preparing the Mayor’s policy framework to ensure the Mayor has regard to the views of the Assembly; changes
the current arrangements for appointing the Authority’s staff; and removes anomalies that hinder the effective working of the Authority.

14. Two delegated powers are conferred under this Part. Both relate to the provisions on confirmation hearings for certain appointments to the Mayor (Clause 4 and Schedule 1).

Clause 4 and Schedule 1: Confirmation hearings etc for certain appointments by the Mayor

15. Clause 4 inserts into the 1999 Act a new section 60A which specifies certain Mayoral appointments in relation to which the Assembly may hold confirmation hearings under Schedule 4A to the 1999 Act. The offices to which confirmation hearings will apply are:

- chairman, or deputy chairman, of Transport for London
- chairman, or deputy chairman, of the London Development Agency
- chairman, or vice-chairman, of the Metropolitan Police Authority
- chairman of the London Fire and Emergency Planning Authority
- chair of the Culture Strategy Group for London
- chairman, or deputy chairman, of the London Pensions Fund Authority

16. Clause 4(5) confers a power on the Secretary of State, by order, to amend the list of offices to which confirmation hearings will apply. The power is included to allow further offices to be included in the list. The confirmation hearing process is new and untried in relation to the Authority and Ministers believe that it is sensible for the process to bed-down before considering whether other Mayoral appointments might be included in the process. Clause 4(6) requires the Secretary of State to consult the Mayor and Assembly before making any decision to extend the offices to which confirmation hearings apply.

17. An order under this provision would be subject to the negative resolution procedure. We consider this is an appropriate level of Parliamentary scrutiny given the subject matter of the clause and the nature of these powers.

18. Schedule 1 to the Bill sets out the new Schedule 4A to the 1999 Act which provides for the Assembly to hold confirmation hearings for appointments to the offices mentioned above. It provides that the Mayor must not make any of the appointments listed at paragraph 13 overleaf until the confirmation hearing process has ended. He must notify the name and details of the proposed appointee to the Assembly and they may invite the person to appear before them. The Assembly must notify the Mayor stating whether it recommends the proposed appointee or not. The Mayor need not accept the recommendation.

19. Paragraph 8(2) of new Schedule 4A enables the Secretary of State, by order, to make provision for any order for the time being in force under section 63 of the 1999 Act to have effect (with or without modifications) so as to prescribe categories of information which the proposed appointee may refuse to give at a confirmation hearing. It is envisaged that the order will prescribe the same classes of information as apply to persons giving evidence or producing documents to other Assembly meetings.

20. An order would be subject to the negative resolution procedure as is the case for orders under section 63 of the 1999 Act.

Part 2: Transport

21. This Part of the Bill sets out minor changes in relation to the Transport for London (TfL) Board and in respect of TfL functions.
22. No delegated legislative powers are conferred under this Part. However, clause 17 of the Bill amends section 163 of the 1999 Act which prevents TfL from disposing of any operational land without the consent of the Secretary of State being given, by means of an order, subject to negative resolution procedure. Prior to TfL being established, consent for such land disposal was by letter from the Secretary of State to London Regional Transport. To simplify and speed up the current process, the clause amends that requirement so that only the written approval of the Secretary of State is required.

Part 3: London Development Agency

23. This Part of the Bill removes the prohibition on payments of allowance to any chairman or deputy chairman of the London Development Agency who is also an Assembly member.

24. No delegated legislative powers are conferred under this clause.

Part 4: Health

25. This Part amends provisions in the 1999 Act relating to health. It provides for the appointment of a Health Adviser and one or more Deputy Health Adviser(s) to the Authority; imposes a duty on the Mayor to prepare and publish a health inequalities strategy; requires the Authority to consider the effects that any proposed exercise of its general power under section 30 of the 1999 Act would have on health inequalities between persons living in London; and requires the Mayor to have regard to the effect his proposed strategies or revisions would have on health inequalities between persons living in London.

26. Clause 22(1) inserts a new section 309H into the 1999 Act to allow the Secretary of State to direct the Mayor to revise his health inequalities strategy where the Secretary of State considers that it is inconsistent with any national policies and that the inconsistency would have a detrimental effect on achieving the objectives of those policies. The Secretary of State must consult the Mayor before giving a direction.

27. The strategy could potentially affect a wide range of national policies. The proposals and policies it includes will be addressed to mitigating differences in “general health determinants”. The definition of “general health determinants” covers a wide range of matters that potentially determine life expectancy or state of health, except genetic or biological factors. Direction making powers are therefore sought to ensure the Mayor develops his strategy within the framework of national policies.

Part 5: London Fire and Emergency Planning Authority

28. This Part extends the Mayor’s powers in relation to the London Fire and Emergency Planning Authority (LFEPA). Clause 25 enables the Mayor to appoint two members to the LFEPA Board on his own nomination. Clause 26 removes the constraints imposed on a chairman or vice-chairman of LFEPA, who is also an Assembly member, in respect of receiving allowances for carrying out these roles.

29. Clause 27 inserts a new section 328B into the 1999 Act to allow the Secretary of State to issue directions to the Mayor where he considers that any guidance or directions issued to LFEPA by the Mayor are inconsistent with the Fire and Rescue National Framework or fire safety enforcement guidance. This power of direction is necessary to ensure that any guidance or directions issued by the Mayor in accordance with his powers under new section 328A do not conflict with policy requirements and guidance which operate at a national level.
Part 6: Housing

30. This Part of the Bill places a duty on the Mayor to prepare and publish a housing strategy for London. This is to include a statement of the Mayor’s recommendations as to the amount, type and location of new housing which should be provided in London. The Secretary of State will be able to give guidance to the Mayor in preparing or revising the strategy, and may give directions to the Mayor if any part of the strategy is inconsistent with national housing policy or is likely to be detrimental to any region adjoining Greater London. The Housing Corporation must have regard to the housing strategy when exercising certain functions. Local housing strategies prepared by local authorities in London should be in general conformity with the London housing strategy.

31. Four powers of direction are conferred on the Secretary of State under clause 28:

- **New section 333A (6) of the 1999 Act.** This provision allows the Secretary of State to give directions on matters relating to housing in Greater London which should be included in the Mayor’s housing strategy. This will enable the Secretary of State to set out clearly, before the Mayor starts to draft the London housing strategy, the national policy framework within which it must operate and to ensure that the strategy covers all aspects of housing in Greater London.

- **New section 333B(4) of the 1999 Act.** This provision gives the Secretary of State the power to direct modifications to the Mayor’s housing strategy where it conflicts with national policy on housing or where it will have an adverse impact on regions adjoining Greater London. Where such a direction is given, the Mayor must make those modifications before the London housing strategy can be published. The Secretary of State can only issue a direction under this section after consulting the Mayor. This gives the Secretary of State the power to intervene once the London housing strategy has been drafted, but before it is published, to ensure that it does not work against national housing policy. This is particularly important given the significant influence that housing in Greater London has on the national housing market and the enhanced role which the new legislation gives the Mayor to influence, through his housing strategy, funding for housing in Greater London. The consultation period is 6 weeks, but the Secretary of State may specify a longer consultation period.

- **New section 333C(1) of the 1999 Act.** This provision allows the Secretary of State where necessary to direct the Mayor to review the London housing strategy or make revisions as a consequence of the review. The Secretary of State can only require a revision after consulting the Mayor. This reflects the fact that changes in national policy and in funding (for instance as the result of a spending review) might provide new opportunities for, or place new constraints on, the policies and recommendations set out in the London housing strategy. We would expect the Mayor to make revisions as these changes emerge, but this power ensures that revisions can be made as appropriate and to a proper timetable.

- **Finally, subsection 5 of clause 28 allows the Secretary of State where necessary to specify by direction the date by which the Mayor must submit the draft London housing strategy as required by new section 333B.** The Secretary of State can only set a date under this subsection after consulting the Mayor. This is to ensure that the funding recommendations in the housing strategy are in place at the appropriate
time to properly inform properly both the National Affordable Housing Programme and allocations to individual London boroughs.

Part 7: Planning

32. This Part concerns town and country planning in Greater London. It introduces additional procedures relating to consultation on the Mayor’s spatial development strategy; gives the Mayor a power of direction in respect of a local planning authority’s local development scheme; and gives the Mayor power to determine planning and related applications which are of “potential strategic importance”, in place of the local planning authority. It also enables the Mayor to exercise functions of a local planning authority in relation to planning obligations under section 106 of the Town and Country Planning Act 1990. In addition, it amends the existing regulation-making power in section 46 of the Planning and Compulsory Purchase Act 2004 to enable provision to be made for planning contribution in cases where the Mayor is acting as the local planning authority.

33. Eight delegated powers are conferred under this Part. In addition, the Secretary of State is given three powers of direction (one of which is under an order made under the Bill) and the Mayor is given three powers of direction.

Clause 30: Local Development Schemes

34. This clause provides for additional matters to be prescribed in regulations to be made under section 15 of the Planning and Compulsory Purchase Act 2004. These give the Mayor greater involvement in the preparation of local development schemes and allow him to give directions (which may be overridden by the Secretary of State) to a local planning authority to revise or amend a scheme.

35. Clause 30(3) provides for regulations to prescribe the time at which the local planning authority must submit its local development scheme to the Mayor. In addition, it gives the Mayor a power to direct the time at which the scheme must be submitted.

36. Clause 30(4) enables the Mayor, as well as the Secretary of State, to direct a local planning authority to amend its scheme and the way in which to do so.

37. Clause 30(8) provides for regulations to set out when a scheme in respect of which the Mayor has given a direction to amend is to be brought into effect. It also enables a time to be specified within which the Secretary of State may direct the authority to disregard a direction made by the Mayor, or to give effect to the Mayor’s direction with any modifications given in the Secretary of State’s direction. The powers of direction given to both the Mayor and Secretary of State give them discretion to act depending on the individual circumstances of a case.

38. Clause 30(10) provides that a local development scheme is not to be revised pursuant to a direction of the Mayor until such time as the Secretary of State may prescribe in regulations. It also provides a power for the Secretary of State to direct that a local planning authority disregards a direction given by the Mayor to revise a local development scheme within the prescribed time.

39. Regulations under this clause are subject to negative resolution procedure. This accords with the procedure provided for those powers already set out in section 15 of the Planning and Compulsory Purchase Act 2004. They are intended to give flexibility to the procedure for (a) allowing the Mayor to examine schemes and to direct any changes to be made and for (b) enabling the Secretary of State to consider and if necessary override a Mayor’s direction.
Clause 31: Mayor to determine certain applications for planning permission

40. The clause amends the Town and Country Planning Act 1990 (“the 1990 Act”) to give the Mayor power to direct that planning and related applications which are of potential strategic importance in Greater London should be determined by him in place of the local planning authority. It also provides for the application of enactments in relation to cases where the Mayor determines an application. The Mayor’s power to direct enables him to take over only those applications that are of potential strategic importance (and which meet specified requirements). Subsection (2) inserts new section 2A into the 1990 Act, which deals with “applications of potential strategic importance”. This term is already used in the Town and Country Planning (Mayor of London) Order 2000 (SI 2000 No. 1493) (“the Mayor’s Order”) (made under section 74(1B) of the 1990 Act). The current Mayor’s Order provides for the Mayor to direct refusal of planning applications of potential strategic importance. A draft revised Mayor of London Order 2007 was published on 9 January to inform the parliamentary stages of the Bill. This sets out the detail of how the new planning power in the Bill will operate. The Government has committed to consulting on the draft order later in the year. A copy of the draft order is included here at Annex C.

41. New section 2A provides for the term “applications of potential strategic importance” to be defined through the Mayoral order. The order sets out which applications fall into this definition in its schedule. These are largely based on the existing thresholds set out in the current order subject to additions relating to waste, trams and casinos. Under powers given in section 2A, the Mayoral order also sets out the circumstances in which the Mayor may give a direction to take over a planning application and the conditions that must be satisfied so that this power is subject to control by the Secretary of State. Under these powers, the Order also prescribes the circumstances in which the local planning authority may be prohibited from implementing a direction from the Mayor. Setting out these provisions in the order enables the Secretary of State to adapt the arrangements to changing circumstances in light of experience.

42. In terms of process, the draft order sets out a policy test which must be applied and satisfied before the Mayor is justified in taking over and determining an application. The Mayor will only be able to give a direction where land to which the application relates is situated in Greater London. New section 2A enables the order to exclude specified areas within Greater London from the area in respect of which the Mayor may make a direction. The draft order currently applies this exclusion to applications falling into the Olympic Delivery Authority Area and London Thames Gateway Urban Development Corporation Area because of the special arrangements that exist for planning in those areas.

43. New section 2B provides that, in deciding whether to give a direction, the Mayor must have regard to guidance issued by the Secretary of State. Where a direction has been made, this new section also provides for the Mayor to determine connected applications: that is, applications for listed building, conservation area or hazardous substances consent.

44. New section 2C makes further provision as to an order made under section 2A, including procedural matters. This is intended to permit the specification of procedures to be followed when the Mayor is deciding whether to issue a direction under section 2A, when actually issuing a direction and in determining a planning application and any connected application following the making of a direction. Such provision is made, for example, by Article 10 of the draft Order where it sets out the requirement for the Mayor to hear representations from either the applicant or local planning authority before determining an application.

45. The effect of the amendments to the 1990 Act made by clause 31 is to put the Mayor in the place of a local planning authority for the purpose of determining a planning
application and any connected applications. But it is envisaged that provision may need to be made to make it clear by whom (the local planning authority or the Mayor) certain administrative functions arising in the course of the planning process should be carried out. For example, a local planning authority is in a better position to fulfil consultation and other administrative functions and so section 2C enables provision to be made to make it clear to whom a particular duty falls. The draft order, under powers in section 2A, and 2C also makes provision for the Mayor to exercise enforcement functions in addition to, or instead of the local planning authority. This will enable the Mayor and the authority to decide between them who will bring enforcement proceedings in any case and to enable one to enforce in the event that the other is unable or unwilling to do so.

46. The order under section 2A will be subject to the negative resolution procedure. We consider that the procedures for making a direction and for the consideration of applications of potential strategic importance are too detailed to include on the face of the Bill. We also believe it important to ensure flexibility in defining applications of potential strategic importance, specifying a policy test, and in the procedures to be followed, since in the light of experience these may need to be refined. The order, when published, may include discretion for the Mayor to decide whether certain duties when he acts as local planning authority could be better carried out by another local planning authority (the relevant London borough). Discussions are continuing with stakeholders as to whether this should happen. Conversely, there are functions that the Mayor should be required (or have discretion) to carry out if experience shows this is expedient (for example, the enforcement of the terms of planning permissions he grants). In order to allocate these functions to either the Mayor or the local planning authority it may be necessary to apply primary legislation with small modifications. The new section (2C)(2) provides for this.

Clause 35: Planning contributions under section 46 of PCPA 2004

47. This clause amends the existing regulation-making power in section 46 which deals with planning contribution. Section 46 enables regulations to be made providing for the making of a planning contribution in relation to the development or use of land in the area of a local planning authority. Clause 35 enables provision to be made in these regulations for circumstances in which a planning contribution is made where the Mayor is acting as the local planning authority.

48. The power is subject to the affirmative resolution procedure provided for by section 122(6) of the Planning and Compulsory Purchase Act 2004.

Part 8: Environmental Functions

49. This Part of the Bill covers the Authority’s role in waste management in London and climate change and energy. Clause 36 provides that London waste authorities must exercise their waste collection and disposal functions in general conformity with the Mayor’s municipal waste management strategy. Clause 37 extends the requirement for waste authorities to inform the Mayor if they intend to tender for a waste contract. No delegated legislative powers are conferred under these clauses.

50. Clauses 38 to 41 relate to climate change and energy. Clause 38 requires the Authority to exercise its general power in a way best calculated to contribute towards the mitigation of, or adaptation to, climate change. Clause 39 introduces a duty on each of the Mayor and the Assembly to address climate change. Clauses 40 and 41 require the Mayor to prepare and publish a London climate change mitigation and energy strategy and an adaptation to climate change strategy for London. Clause 40 includes a Secretary of State order making power.
Clause 40: The London climate change mitigation and energy strategy

51. This clause amends section 41 of the 1999 Act and inserts a new section 361B into the 1999 Act, requiring the Mayor to prepare a climate change mitigation and energy strategy. The strategy will contain proposals for assisting the implementation of national policies on energy and climate change mitigation in Greater London. The strategy must contain proposals setting out how the Mayor will reduce carbon dioxide emissions from surface transport and the use of energy more broadly, support technological innovation, and promote the efficient production and use of energy. In preparing the strategy, the Mayor will have to have regard both to guidance produced by the Secretary of State, and to national policies on climate change mitigation, security of supply, competitive energy markets and fuel poverty.

52. In preparing or revising the strategy the Mayor must consult a number of prescribed gas and electricity bodies. New section 361B(8) allows the Secretary of State, by order, to substitute another appropriate body for any of the prescribed bodies should a prescribed body cease to exist.

53. An order under this provision will be subject to the negative resolution procedure. We consider this is an appropriate level of Parliamentary scrutiny given the subject matter of the order.

54. The purpose of this delegated power is to enable the list of organisations the Mayor must consult to be amended should one of them cease to exist.

55. An order making power is appropriate in this context because under the Consumers, Estate Agents and Redress Bill, it is proposed that the Gas and Electricity Consumer Council - one of the bodies the Mayor is required to consult under subsection (7) of new section 361B - together with the National Consumer Council and Postwatch, be replaced with a new cross sectoral consumer body. We will need to be able to ensure that the Mayor consults this new body if and when it is established, and given the uncertainties surrounding the timing of these two Bills this order making power is the most appropriate way of achieving that outcome.

56. Subsection (9) of new section 361B provides that an order made under subsection (8) may have effect in relation to times before the day on which it is made. The consultation process is likely to be continual, and not limited to isolated periods. So it may well be that the new body will have views to contribute to the Mayor regarding his proposals for the climate change mitigation and energy strategy from the moment that it is created - and before an order under subsection (8) is made.

57. If the order made under subsection (8) is drafted so as to have effect in relation to times before the day on which it is made, this provision will ensure that the duty to have regard to the old body ceases at the right time - so that the duty does not purport to continue after the abolition of the body.

58. The other side of the same coin is that this provision will ensure that the duty to have regard to the old body ceases at the right time - so that the duty does not purport to continue after the abolition of the body.

59. Clauses 39 to 41 also include Secretary of State powers of direction:

- Clause 39 inserts a new section 361A into the 1999 Act to place a duty on the Mayor and Assembly to address climate change. Subsections (2) (c) and (3) (b) require the Mayor and Assembly respectively to comply with any guidance or directions issued by the Secretary of State with respect to the means by which, or manner in which, the Mayor or the
Assembly are to perform duties in relation to the duty to address climate change.

- Clause 40 inserts a new section 361C into the 1999 Act. The new subsection (1) of that section allows the Secretary of State to direct the Mayor to revise the climate change mitigation and energy strategy where the Secretary of State considers the strategy is inconsistent with national policies relating to climate change or energy and the inconsistency would have a detrimental effect on achieving any or all of the objectives of those policies. Where the Secretary of State gives the Mayor such a direction, the Mayor must revise the strategy in accordance with the direction.

- Clause 41 inserts a new section 361D into the 1999 Act which requires the Mayor to prepare and publish an adaptation to climate change strategy for London. The strategy must contain the Mayor's policies and proposals for adaptation to the effects, both actual and expected, of climate change in Greater London. This clause also inserts a new section 361E into the 1999 Act. The new sub-section (1) of that section allows the Secretary of State to direct the Mayor where he considers the Mayor's adaptation to climate change strategy is inconsistent with national policies relating to climate change and the inconsistency would have a detrimental effect on achieving any or all of the objectives of those policies.

60. The purpose of subsection (1) in new section 361C is to ensure consistency between the policies contained in the London climate change and energy strategy and national policies on climate change mitigation and energy. Similarly, subsection (1) of new section 361D is to ensure consistency between the Mayor’s adaptation to climate change strategy and national policies relating to climate change.

61. Direction making powers are sought to ensure that the Mayor develops the London climate change mitigation and energy strategy within the framework of national climate change and energy policy, as he is required to do under new section 361B. The power will only be used to ensure that the London climate change mitigation and energy strategy or its implementation would not cause detriment to the achievement of national climate change or energy policies. Direction making powers are also sought to ensure that the Mayor's adaptation to climate change strategy does not contain inconsistencies with national policies announced by Her Majesty's Government which would cause detriment to achieving the objectives of these policies.

62. No parliamentary procedure is proposed. The Secretary of State is required to consult the Mayor before a direction is given.

Part 9: Culture, Media and Sport

63. This Part concerns the Museum of London (MoL). It also includes miscellaneous provisions in relation to consultation on the Mayor’s culture strategy and Mayoral appointments to arts, cultural and sports bodies.

64. Clauses 42 to 46 relate to the transfer of the Government’s responsibilities for funding and governance of the MoL to the Mayor. No delegated legislative powers are conferred under these clauses.

65. In relation to the miscellaneous provisions, delegated legislative powers are conferred under clause 47 and clause 48 of the Bill.
Clause 47: The Mayor’s culture strategy: consultation

66. This clause amends the current provisions at section 376 of the 1999 Act relating to the consultation process for the Mayor’s culture strategy. In future, the Cultural Strategy Group for London would be required to consult certain designated cultural bodies when proposing revisions to the strategy or when consulted by the Mayor if he makes revisions other than those proposed by the Group. These designated bodies (listed in subsection 10) are:

- Archives, Libraries and Museums London
- The Arts Council of England
- The Commission for Architecture and the Built Environment
- The English Sports Council
- The Historic Buildings and Monuments Commission for England
- The Museums, Libraries and Archives Council
- The UK Film Council

67. It is proposed that the Secretary of State should have a power, by order, to amend the list of designated cultural bodies by adding, removing or amending the existing names on the list, but not so as to include any body that does not have functions relating to sport, culture or the arts.

68. The reason for this power is to allow the Secretary of State to amend the list should new bodies relating to sport, arts or culture be created or if existing bodies are reorganised or change their names. This power is left to delegated legislation because it is not possible to predict now which new bodies may be created in the future or what changes may be made to existing bodies.

69. An order under this section will be subject to the negative resolution procedure. We consider this is an appropriate level of Parliamentary scrutiny given the subject matter and the nature of this power.

Clause 48: The Mayor’s duty to exercise certain powers of appointment

70. The Mayor is expected to gain certain rights of appointment of board members of the London Regional Council of Arts Council England; the English Sports Council London Regional Sports Board; and Archives, Libraries & Museums London. It is expected that these new appointment powers will be given to the Mayor by amendment of the Royal Charters of the Arts Council England and the English Sports Council and of the Articles of Association of Archives, Libraries and Museums London and the Museums, Libraries and Archives Council.

71. Clause 48 inserts a new section 377A into the 1999 Act. This new section imposes a duty on the Mayor to exercise appointment rights he has been granted as soon as reasonably practicable after he has received a request in writing from bodies prescribed by the Secretary of State. Prescribed bodies must have functions relating to sport, culture or the arts.

72. It is proposed that subsection (5) of this clause will give the Secretary of State a power to prescribe the list of bodies and amend the list by order. It is intended to be used to prescribe bodies to which Government has agreed the Mayor should have appointment powers after changes have been made to the bodies’ founding documents. As referred to above, the bodies expected to be prescribed are the London Regional Council of Arts Council England, the English Sports Council London Regional Sports Board and Archives, Libraries & Museums London. As with clause 47, the Secretary of State may
need to amend the list of prescribed bodies to take account of name changes, reorganisation or the creation of new bodies related to sports, culture or the arts. This power is left to delegated legislation because changes are necessary to the founding documents before the Mayor will have appointment powers. Those changes have not yet been made. As with clause 47, it is not possible to predict now which new bodies may be created in the future or what changes may be made to existing bodies.

73. An order under this section will be subject to the negative resolution procedure in both Houses of Parliament. We consider this is an appropriate level of Parliamentary scrutiny given the subject matter and the nature of this power.

Part 10: Miscellaneous and General

Clause 49: Common provision of administrative, professional and technical services

74. Part 10 contains only one clause, which inserts a new section 401A into the Act. This relates to administrative, professional or technical services - "back office" services. The new section enables each of the “constituent bodies”, namely, the Authority and its functional bodies (TfL, LDA, LFEPA and MPA) to provide such services to, or receive them from any of the others. It also enables those bodies to share such functions by establishing joint committees.

75. Clause 49 gives the Secretary of State a power to amend, by order, this new provision so as to extend or restrict the services or functions to which it applies. In future, the Secretary of State may decide to extend the range of services should the Authority or functional bodies make a good case for doing so. Local authorities already have wide powers to delegate functions to each other.

76. An order under clause 49 will be subject to the negative resolution procedure. We consider this is an appropriate level of Parliamentary scrutiny given the subject matter of the clause and the nature of these powers.

Part 11: Supplementary Provisions

77. Clause 50 of the Bill (Orders) provides that any power conferred on the Secretary of State to make an order is exercisable by statutory instrument. The only such power in the Bill is the power to bring its provisions into force. The subordinate legislation may make different provision for different cases. It may make incidental, consequential, supplemental and transitional provision or savings, including power to amend any enactment (whenever passed or made). The clause provides that any order which amends any enactment is subject to the negative resolution procedure, unless by virtue of some other provision, it is subject to the affirmative procedure instead.

78. Clause 51 of the Bill (Directions) provides that any directions given under the Bill must be in writing. It also provides that a power of direction conferred by the Bill includes power to vary or revoke the direction.

79. Clause 53 of the Bill makes provision for any consultation carried out by the Mayor on his new statutory strategies after enactment but before the relevant provisions come into force, to be treated as though it had been carried out after commencement.

80. Clause 56 of the Bill (Commencement etc) makes provision for Part 11 to come into force on Royal Assent. Sections 28 and 43 are to come into effect two months after Royal Assent. Subject to those specific provisions subsection 56(7) provides for the Secretary of State, by order, to appoint the day on which the provisions of the Bill will come into force. This is the standard form of commencement order provision. Such an order will not be
subject to any Parliamentary procedure, unless it contains provisions amending any enactment, as explained in paragraph 75.

Annex A: Delegated Powers in the Greater London Authority Bill

<table>
<thead>
<tr>
<th>CLAUSE</th>
<th>DESCRIPTION</th>
<th>PROCEDURE</th>
<th>New or Existing Order / Regulation Making Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1: General Functions of the Authority</td>
<td></td>
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<tr>
<td>4(1)(new subsection 60A(5))</td>
<td>Provides that the Secretary of State may extend the list of offices to which confirmation hearings apply following consultation with the Mayor and Assembly.</td>
<td>Negative</td>
<td>New order making power</td>
</tr>
<tr>
<td>4 (Schedule 1, paragraph 8 (2))</td>
<td>Enables the Secretary of State to prescribe the information which proposed appointees may refuse to give evidence</td>
<td>Negative</td>
<td>New order making power</td>
</tr>
<tr>
<td>Part 2: Transport</td>
<td></td>
<td></td>
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<tr>
<td>Part 3: London Development Agency</td>
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<tr>
<td>Part 4: Health</td>
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<tr>
<td>Part 5: London Fire and Emergency Planning Authority</td>
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<td>Part 6: Housing</td>
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<tr>
<td>Part 7: Planning</td>
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<tr>
<td>30(3)</td>
<td>Allows the Secretary of State to specify when a local development scheme must be submitted to the Mayor</td>
<td>Negative</td>
<td>Existing regulation making power at section 15 of the Planning and Compulsory Purchase Act 2004</td>
</tr>
<tr>
<td>30(8)</td>
<td>Allows the Secretary of State to specify when a scheme which is the subject of a direction by the Mayor is to be brought into effect</td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td>30(8)</td>
<td>Allows the Secretary of State to prescribe the time within which she may give a direction to the local planning authority to disregard a direction by the Mayor to amend a local development scheme or to give effect to it with modifications</td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td>30(10)</td>
<td>Allows the Secretary of State to prescribe the time within which she may give a direction to the local planning authority to disregard a direction by the Mayor to amend a local development scheme or to give effect to it with modifications</td>
<td>Negative</td>
<td></td>
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<tr>
<td>CLAUSE</td>
<td>DESCRIPTION</td>
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<tr>
<td>31(2)</td>
<td>Allows the Secretary of State to: set out the circumstances in which the Mayor may give a direction that he is to determine an application and the conditions to be satisfied, to make provision in relation to applications and connected applications, the procedure to be followed and for the Mayor to enforce conditions and planning obligations attached to planning permissions he grants.</td>
<td>Negative</td>
<td>Existing order making power at section 2 of the Town and Country Planning Act 1990.</td>
</tr>
<tr>
<td>31(2)</td>
<td>Allows the Secretary of State to specify areas within Greater London to which the Mayor's power of direction will not apply</td>
<td>Negative</td>
<td></td>
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<tr>
<td>31(2)</td>
<td>Allows the Secretary of State to define the term 'applications of potential strategic importance'</td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Allows the Secretary of State, when making regulations under section 46 of the Planning and Compulsory Purchase Act 2004, to include provision for the making of a planning contribution where the Mayor is acting as the local planning authority for the purposes of determining an application</td>
<td>Affirmative</td>
<td>Regulation making power at section 46 of the Planning and Compulsory Purchase Act 2004</td>
</tr>
<tr>
<td>40(2)</td>
<td>Allows the Secretary of State to substitute prescribed gas and electricity bodies for others if the prescribed bodies cease to exist</td>
<td>Negative</td>
<td>New order making power</td>
</tr>
<tr>
<td>47(5)</td>
<td>Allows the Secretary of State to amend a list of ‘designated cultural bodies’ - bodies which must be consulted by the Culture Strategy Group for London when revisions are made to the Mayors culture strategy</td>
<td>Negative</td>
<td>New order making power</td>
</tr>
<tr>
<td>48(1)</td>
<td>Allows the Secretary of State to</td>
<td>Negative</td>
<td>New order</td>
</tr>
</tbody>
</table>
### Part 10: Miscellaneous and General

<table>
<thead>
<tr>
<th>CLAUSE</th>
<th>DESCRIPTION</th>
<th>PROCEDURE</th>
<th>New or Existing Order / Regulation Making Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>section 377A(5))</td>
<td>prescribe and subsequently amend the list of bodies to which the Mayor must exercise his power of appointment</td>
<td></td>
<td>making power</td>
</tr>
</tbody>
</table>

### Part 11: Supplementary Provisions

<table>
<thead>
<tr>
<th>CLAUSE</th>
<th>DESCRIPTION</th>
<th>PROCEDURE</th>
<th>New or Existing Order making power</th>
</tr>
</thead>
<tbody>
<tr>
<td>49(1) (new section 401(A)(7))</td>
<td>Gives the Secretary of State the power to amend or restrict the services which the GLA Group may delegate to each other or to a joint committee.</td>
<td>Negative</td>
<td></td>
</tr>
</tbody>
</table>

### Annex B: Secretary of State Powers of Direction in the Greater London Authority Bill

<table>
<thead>
<tr>
<th>CLAUSE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1: General Functions of the Authority</td>
<td></td>
</tr>
<tr>
<td>Part 2: Transport</td>
<td></td>
</tr>
<tr>
<td>Part 3: London Development Agency</td>
<td></td>
</tr>
<tr>
<td>Part 4: Health</td>
<td></td>
</tr>
<tr>
<td>22 (1)</td>
<td>Allows the Secretary of State to direct the Mayor to revise his health inequalities strategies under certain circumstances.</td>
</tr>
<tr>
<td>Part 5: London Fire and Emergency Planning Authority</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Allows the Secretary of State to direct the Mayor where he considers that any directions or guidance issued to LFEPA by the Mayor are inconsistent with prescribed frameworks and guidance.</td>
</tr>
<tr>
<td>Part 6: Housing</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Four separate powers of direction allow the Secretary of State to direct the</td>
</tr>
<tr>
<td>CLAUSE</td>
<td>DESCRIPTION</td>
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<tr>
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</tr>
<tr>
<td>Part 7: Planning</td>
<td></td>
</tr>
<tr>
<td>30(8)</td>
<td>Allows the Secretary of State to direct the local planning authority to disregard a direction given by the Mayor to amend a local development scheme or to give effect to the direction with modifications</td>
</tr>
<tr>
<td>30(10)</td>
<td>Allows the Secretary of State to direct the local planning authority to disregard a direction given by the Mayor to revise a local development scheme</td>
</tr>
<tr>
<td>31(2)</td>
<td>Allows the Secretary of State to give a direction under an order made under new section 2A, setting out the circumstances in which and the conditions subject to which the Mayor may give a direction that he will determine an application</td>
</tr>
<tr>
<td>Part 8: Environmental Functions</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Requires the Mayor and Assembly to comply with any guidance or directions issued by the Secretary of State with respect to the means by which, or manner in which, the Mayor/Assembly are to perform duties in relation to the duty to address climate change</td>
</tr>
<tr>
<td>40</td>
<td>Allows the Secretary of State to direct the Mayor in relation to the London climate change mitigation and energy strategy</td>
</tr>
<tr>
<td>41</td>
<td>Allows the Secretary of State to direct the Mayor in relation to his adaptation to climate change strategy</td>
</tr>
<tr>
<td>Part 9: Culture, Media and Sport</td>
<td></td>
</tr>
<tr>
<td>Part 10: Miscellaneous and General</td>
<td></td>
</tr>
<tr>
<td>Part 11: Supplementary Provisions</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Provides that any directions given under the Bill must be in writing. It also provides that a power of direction conferred by the Bill includes power to vary or revoke the direction.</td>
</tr>
</tbody>
</table>
APPENDIX 2: OFFENDER MANAGEMENT BILL

Memorandum by the Home Office

Introduction

1. The Bill is in four Parts. Part 1 contains provisions about new arrangements for the delivery of probation services. Part 2 contains a number of provisions relating to prisons and secure training centres. Part 3 contains miscellaneous provisions relating to offender management. Part 4 sets out supplementary provisions about commencement, extent, repeals and so forth. This memorandum is an updated version of that supplied to the Committee when the Bill was introduced and reflects the text of the Bill as introduced in the House of Lords.

2. Clause 33(3) to (5) sets out the level of parliamentary scrutiny in respect of the delegated powers created by the Bill.

Part 1: New arrangements for the provision of probation services

Clause 1(5): Power to extend “the probation purposes”

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative

3. Clause 1(5) gives the Secretary of State power to extend the definition of “the probation purposes” which is contained at clause 1(1). The purposes effectively define what falls within the generic description probation services. The power largely replicates the power at section 1(3) of the Criminal Justice and Court Services Act 2000 (“the 2000 Act”).

4. The power will allow the definition to be extended (but not reduced) and is subject to the negative resolution procedure (like the power at section 1(3) of the 2000 Act). The Department’s view is that this is the appropriate level of parliamentary scrutiny for this provision.

Clause 5(1): Power to establish and dissolve probation trusts and to alter their names and purposes

Power conferred on: Secretary of State

Power exercisable by: Order

Parliamentary Procedure: None

5. Clause 5(1) confers a power on the Secretary of State to establish or dissolve probation trusts. The Secretary of State may also alter the name or purposes of a probation trust.

6. Probation trusts will be the public sector vehicle for the delivery of probation services throughout England and Wales.

7. The order making power is not subject to any parliamentary procedure and the Department’s view is that this is appropriate because in due course trusts may need to be
established or dissolved for commercial reasons, for example to bid for a contract or because a contract is lost to another provider.

Clause 5(3)(c): Power to specify further purposes for a probation trust

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

8. Clause 5(3) provides that the purposes of a probation trust may include all or any of a number of purposes identified in subsection (3). These purposes include enabling a trust to enter into contracts with parties other than the Secretary of State for the provision of probation services and enabling trusts to cover activities in relation to service courts. Clause 5(3)(c) gives the Secretary of State the power to specify in regulations further purposes of a probation trust.

9. The reason for allowing this power to be delegated through secondary legislation, rather than on the face of the Bill, is to provide a level of flexibility to ensure that the Secretary of State can add to the purposes in clause 5(3) in light of particular circumstances or changes. It is far better that changes can be incorporated without the need to amend primary legislation.

10. This power is subject to the negative resolution procedure. The Department’s view is that this is the appropriate level of parliamentary scrutiny for this provision.

Schedule 1, paragraph 6(3): Power to direct that the first chief executive is to be a person appointed by the Secretary of State

Power conferred on: Secretary of State

Power exercisable by: Direction

Parliamentary procedure: None

11. Paragraph 6 of Schedule 1 sets out the provisions on the appointment of chief executives of trusts and on the determination of their terms of employment. Usually chief executives will be appointed by the appointed members on terms of employment determined by them. An appointed member means a member of a trust appointed by the Secretary of State. However, paragraph 6(3) enables the Secretary of State to direct that the first chief executive is to be appointed by the Secretary of State on terms determined by him.

12. Any direction, as is usual with directions, is not subject to any parliamentary procedure.
Schedule 1, paragraph 8(2): Power to direct that determinations regarding remuneration etc. do not require the Secretary of State’s approval

*Power conferred on:* Secretary of State  
*Power exercisable by:* Direction  
*Parliamentary procedure:* None

13. Paragraph 8 enables a probation trust to determine the terms of employment of its staff subject to the approval of the Secretary of State. The Secretary of State may however direct that terms relating to remuneration, fees, expenses, pensions, allowances or gratuities do not require his approval in relation to certain classes of case. It is appropriate that the Secretary of State retains a residual role in relation to those terms because it is envisaged that the pay of staff employed by probation trusts will continue to be negotiated nationally for the time being.

14. Any direction is, as is usual with directions, not subject to any parliamentary procedure.

Schedule 1, paragraph 14(1): Power to issue general or specific directions to a probation trust

*Power conferred on:* Secretary of State  
*Power exercisable by:* Direction  
*Parliamentary procedure:* None

15. Paragraph 14 enables the Secretary of State to give a general or specific direction to a probation trust. It replaces the existing similar power contained in paragraph 12(1) of schedule 1 to the 2000 Act. In particular the power could be used to require probation trusts to provide the Secretary of State with management or financial information relating to the operation of the trust to enable the Secretary of State to effectively supervise the performance of the trust.

16. Any direction is, as is usual with directions, not subject to any parliamentary procedure.

Schedule 2, paragraphs 2 and 5: Power to make a scheme transferring staff and property etc. from local probation boards to probation trusts and others

*Power conferred on:* Secretary of State  
*Power exercisable by:* Statutory Scheme  
*Parliamentary procedure:* None

17. Clause 8 provides that Schedule 2 shall have effect. Paragraph 1 of this Schedule confers a power on the Secretary of State to make transfer schemes. These schemes may make provision, as set out in the Schedule, in respect of the transfer of staff, property, rights and liabilities from local probation boards to probation trusts, the Secretary of State and other persons with whom the Secretary of State has made arrangements for the delivery of probation services.
18. Similar provisions to make transfer schemes other than by order are contained in section 6(3) of, and Schedule 2 to, the Courts Act 2003 concerning the abolition of Magistrates’ Courts Committees and transfers to the Lord Chancellor; and in section 36(3) and (6) of, and Schedule 3 to, the Water Act 2003 in respect of transfers from the Director General of Water Services to the Water Services Regulation Authority or the Consumer Council for Water. Following these precedents, it is not proposed that any such scheme should be subject to any parliamentary procedure.

Schedule 2, paragraph 5(3): Power to issue directions about consultation in respect of a staff transfer scheme

Power conferred on: Secretary of State

Power exercisable by: Direction

Parliamentary procedure: None

19. Paragraph 5(3) enables the Secretary of State to give a direction relating to consultation about the terms of a transfer scheme made under Schedule 2 relating to staff. The direction, like the scheme itself, would not be subject to any parliamentary scrutiny and the Department’s view is that this is appropriate for this provision.

Clause 10(2): Power to make regulations relating to approved premises

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative

20. Clause 10 largely re-enacts section 9 of the 2000 Act and clause 10(2) replicates section 9(3) of that Act. The Secretary of State is given a power to make regulations relating to the management and inspection of approved premises and it is expected that any regulations would be similar to those made under section 9(3) of the 2000 Act.

21. The existing regulation making power in section 9(3) of the 2000 Act is subject to the negative resolution procedure and the Department’s view is that this is appropriate level of parliamentary scrutiny for the new power.

Clause 11(2): Power to amend the definition of “listed person” in clause 11(2)

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary Procedure: Affirmative

22. Clause 11(2) defines the “listed persons” with whom the constituent elements of the Secretary of State, acting through the National Offender Management Service, can share information on a reciprocal basis. This power enables the Secretary of State by order to prescribe additional bodies.

23. The order making power is subject to the affirmative resolution procedure and the Department’s view is that this is the appropriate level of parliamentary scrutiny, given the ambit of the power.
Clause 11(7): Power to amend or repeal legislation relating to disclosure of information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

24. It is plain from the clause that the power to disclose information provided by the clause does not affect any existing power to disclose information and takes effect subject to any existing enactment. However, it is recognised that it may be desirable to modify or remove restrictions which have the unintended effect of frustrating the object of the clause. Sub-clause (7) provides such a power to amend existing primary or secondary legislation in order to modify or remove restrictions. Before seeking to use this power the Secretary of State will ensure that appropriate consultation has taken place with all interested parties.

25. The order making power is subject to the affirmative resolution procedure and the Department’s view is that this is the appropriate level of parliamentary scrutiny.

Clause 12: Power to repeal section (Restrictions on certain arrangements under section 3(2))

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary Procedure: Affirmative

26. Clause 12 confers a power on the Secretary of State to repeal clause 4, either partially or in its entirety, by means of an order. Clause 4(1) effectively provides that the Secretary of State may make contractual or other arrangements for “restricted probation provision” only with a probation trust or other public body. Clause 4(2) defines “restricted probation provision” as the giving of assistance to courts in determining the appropriate sentence to pass, or making any other decision, in respect of a person charged with or convicted of an offence. This means that the Secretary of State will not be able to contract with any non-public sector providers for the work which probation undertake in relation to assisting the courts.

27. The order making power under clause 12 will be used if, at a future date, the Government decides that it is the appropriate time to open up all or part of this area of work to non-public sector providers. An order under this power will be subject to the affirmative procedure in order to ensure that such a decision is subject to the appropriate level of parliamentary scrutiny.
Part 2: Prisons

Clause 15(2): Power to specify restricted activity subject to authorisation

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary Procedure: Negative

28. Clause 15(2) inserts a new section 86B in the Criminal Justice Act 1991. This section will enable the Secretary of State to specify by order certain types of activity the doing of which would otherwise involve the performance of a custodial duty. At present any such task involving the performance of such a duty can only be carried out at contracted out prisons by prisoner custody officers or prison officers temporarily attached to the prison if they are authorised by the director of the prison to do so. However, once specified in an order, a certain task can be authorised to be done by a member of staff who is not a prisoner custody officer or temporarily attached prison officer.

29. Broadly speaking, the sorts of tasks envisaged as appropriate for specification in any order made under this section would be those which do not routinely require extensive or significant direct contact with prisoners (for example, gate keeping functions such as the control of entry to and exit from the prison by visitors or the staffing of prison control rooms).

30. The order making power is subject to the negative resolution procedure (see new section 86B(6)) and the Department’s view is that this is the appropriate level of parliamentary scrutiny.

Clause 19(1): Power to amend classification of articles

Power conferred on: Secretary of State

Power exercisable by: Order (Lists A and B) or rules (List C) made by statutory instrument

Parliamentary procedure: Affirmative resolution where List A is being amended; otherwise negative

31. Clause 19 replaces section 40 of the Prisons Act 1952 (“the 1952 Act”) with new sections 40A to 40C. Sections 40B and 40C create new offences of taking certain items into a prison. The items to which the offences relate are listed on List A, List B and List C (with items on List A being the most dangerous) and the maximum penalties vary according to which list the item is on.

32. New section 40A(6) enables the Secretary of State to vary Lists A and B by adding, repealing or modifying entries. The order making power does not extend to List C because items are prescribed for the purposes of List C by the Prison Rules made under section 47 of the 1952 Act (see new section 40A(5)).

33. If an order under new section 40A(6) of the 1952 Act relates to List A (whether or not it amends List B), it will be subject to the affirmative resolution procedure (see clause 19(2) which inserts new section 52(2A) and (2B) into the 1952 Act). Otherwise, the order will be subject to the negative resolution procedure. It is submitted that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.
34. Amendments to List C made by the Prison Rules under section 47 of the 1952 Act will be subject to the negative resolution procedure (see section 66(4) of the Criminal Justice Act 1967). It is submitted that this provides the appropriate level of parliamentary scrutiny for amendments to List C.

Part 3: Other provisions about offender management

Clause 28(3): Extension of the power to amend the functions of the Youth Justice Board

**Power conferred on:** Secretary of State

**Power exercisable by:** Order made by statutory instrument

**Parliamentary Procedure:** Affirmative

35. Clause 28(3) inserts a new subsection (6A) in section 41 of the Crime and Disorder Act 1998 (“the 1998 Act”). Section 41(6)(b) of the 1998 Act enables the Secretary of State, by order, to provide that any function of his which is exercisable in relation to the youth justice system shall be exercisable concurrently with the Youth Justice Board. Subsection (6A) would allow the Secretary of State, when making an order under section 41(6)(b), to restrict the manner or classes of case in which the Youth Justice Board may exercise his functions in particular cases.

36. The Department considers the affirmative resolution procedure to provide the appropriate level of Parliamentary scrutiny, as orders made under section 41(6) of the 1998 Act are subject to that procedure. This will enable any future restrictions the Secretary of State wishes to impose on the functions of the Youth Justice Board in respect of particular cases, to be contained in the same statutory instrument.

Clause 30(7): Power to extend definition of youth detention accommodation

**Power conferred on:** Secretary of State

**Power exercisable by:** Order made by statutory instrument

**Parliamentary Procedure:** Negative

37. Clause 30 will, with respect to Detention and Training Orders, substitute the term “secure accommodation” with “youth detention accommodation”. At present a young offender sentenced to a Detention and Training Order must be placed during the custodial part in one of the types of “secure accommodation” listed in section 107 of the Powers of Criminal Courts (Sentencing) Act 2000 (“the 2000 Act”). This will make it possible for young offenders to be placed in a wider category of accommodation during the custodial part of their Detention and Training Order.

38. At present under section 107(1)(e) of the 2000 Act the Secretary of State may direct such other accommodation to be provided for the purpose of restricting liberty. Clause 30(7) substitutes this power with one for the Secretary of State to specify, by order, other accommodation or descriptions of accommodation which will come within the meaning of “youth detention accommodation”, without it necessarily being for the sole purpose of restricting liberty.

39. The power will allow the definition to be extended (but not reduced) and is subject to the negative resolution procedure. The Department’s view is that this is the appropriate level of parliamentary scrutiny for this provision.
Schedule 4, paragraph 6(2): Power to modify application of section 32(4)(a) of the Act

**Power conferred on:** Secretary of State

**Power exercisable by:** Statutory Scheme

**Parliamentary procedure:** Negative

40. Paragraph 6 of Schedule 4 makes transitional provision relating to the imprisonment of offenders aged 18 or over but under 21.

41. Clause 32(4) will replace the definitions of “offender” and “secure training order” with that in 32(4)(a) of a “detained person” being a person remanded, committed or detained in “youth detention accommodation”. It has been drafted on the basis that section 61 of the 2000 Act, which includes provision for the abolition of sentences of detention in a young offenders institution and custody for life, will have been brought into force.

42. Paragraph 6 of Schedule 4 makes contingent transitional provision in case clause 32(4)(a) is brought into force first by providing that the power in clause 35(1) may be used to modify the definition contained in clause 32(4)(a) to take account of the need to refer to sentences passed before section 61 of the 2000 Act comes into effect.

43. This provision is similar to that contained in Paragraph 1 of Schedule 38 to the Criminal Justice Act 2003. The order will be subject to the negative resolution procedure which it is submitted provides the appropriate level of parliamentary scrutiny.

**Part 4: Supplemental**

Clause 35(1): power to make provision which is consequential and transitional etc. on the Bill

**Power conferred on:** Secretary of State

**Power exercisable by:** Order made by statutory instrument

**Parliamentary procedure:** Affirmative resolution where primary legislation is amended or repealed; otherwise negative

44. Clause 35(1) confers power on the Secretary of State to make such supplementary, incidental, consequential, transitional or saving provision as he considers appropriate for the purposes of the Bill. This power includes a power to amend, repeal or revoke:

- an Act or subordinate legislation,
- an Act of the Scottish parliament or any instrument made under such an Act, and
- Northern Ireland legislation or any instrument made under such legislation.

45. The powers conferred by clause 35 are wide. But there are various precedents for such provisions including section 426 of the Financial Services and Markets Act 2000, section 127 of the Postal Services Act 2000, section 333 of the Criminal Justice Act 2003 and section 173 of the Serious Organised Crime and Police Act 2005. There are numerous references to local probation boards in primary and subordinate legislation and these bodies will be replaced by Clause 1 of this Bill. The power conferred by this clause could be exercised in respect of these references in subordinate legislation and any references in
primary legislation (including Bills of this Session) that are not covered by the amendments made by Schedule 4. There are also other far-reaching changes made by other Parts of this Bill and it is possible that not all of the consequences of them have been identified in the Bill’s preparation. To the extent that an order under this clause amends or repeals primary legislation, it will be subject to the affirmative resolution procedure (see clause 33(3)). Otherwise, the order will be subject to the negative resolution procedure. It is submitted that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 38(1): General Commencement power

Power conferred on: Secretary of State
Power exercisable by: Order made by statutory instrument
Parliamentary Procedure: None

46. Clause 38(1) is the standard power to bring provisions of the Bill into force by commencement order. It is conferred on the Secretary of State. The general position is that, as usual with the commencement orders, they are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by order enables the provisions to be brought into force at a convenient time.

Clauses 38(4) to (6): Specific commencement power for polygraph test provisions

Power conferred on: Secretary of State
Power exercisable by: Order made by statutory instrument
Parliamentary Procedure: None where commencement is in respect of a specific area for a specific time, otherwise affirmative resolution

47. The effect of clauses 38(4) to (6) is that where it is proposed to commence the polygraph test provisions contained in clauses 24 to 26 in a specific area for a specified period of time the usual commencement procedure (i.e. that described in paragraph 46 above) applies. By contrast, where it is proposed to commence those provisions without such a geographical or temporal limitation, commencement will be subject to the affirmative resolution procedure. This approach has been adopted because of the special nature of the polygraph-testing provision. The fact that the usefulness of polygraph tests is still a matter to be more fully examined in practice means that their use will be introduced by way of a pilot. Once the pilot is complete and the results have been assessed, it is considered appropriate that Parliament be given the opportunity to debate the issue before making such tests more widely available.
APPENDIX 3: STATISTICS AND REGISTRATION SERVICE BILL

Memorandum by the Treasury

Introduction

1. The Statistics and Registration Services Bill was introduced in the House of Commons on 21 November 2006. It contains 73 clauses and four schedules. This memorandum identifies the provisions for delegated legislation in the Bill. It explains the purpose of the delegated powers taken; describes why the matter is to be left to delegated legislation; and explains the procedure selected for each power and why it has been chosen.

Purposes of the Bill and main provisions

2. The Bill provides as follows:

Part 1

- Clauses 1 to 5 establish the new Board as a non-ministerial department. The Board itself will be composed of at least six non-executive members, including the Chairman, and three executive members.
- Clause 7 provides the Board with an overall objective of promoting and safeguarding the quality of official statistics, good practice in relation to official statistics and the comprehensiveness of official statistics.
- Clauses 8 to 27 confer a number of functions on the Board, relating to the production and quality assurance of statistics, including a power to prepare a Code of Practice and assess statistics against it for designation as National Statistics. In clause 23, the functions of the Registrar General for England and Wales in relation to the census are transferred to the Board.
- Clauses 28 to 34 deal with the organisation and administration of the Board, including establishing the National Statistician as the Board’s chief professional statistical adviser and member of the Board, and the Head of Assessment as the Board’s principal adviser on the assessment of National Statistics.
- Clauses 35 to 38 provide for the use and disclosure of information by the Board and clauses 39 to 43 set out gateways for the sharing of information by and with the Board. Clauses 44 to 51 provide for regulations to be made for data sharing between the Board and other public authorities.

Part 2

- Clauses 66 to 69 regularise the employment position of registrars in England and Wales, by making them local authority employees, providing them with employment rights and protections.

Parliamentary scrutiny

3. The Bill contains eleven provisions for delegated powers. These provisions, and the secondary legislation to be made under them, ensure that there is appropriate Parliamentary scrutiny for the exercise of such powers. Out of the eleven delegated powers, nine are proposed under the affirmative procedure. It is considered that no
Parliamentary procedure is required in respect of the power to delegate functions relating to the production of statistics in clause 22 or the power to bring the Act into force by a Commencement Order made by the Treasury under clause 71.

Territorial Coverage

4. Clause 72 sets out that the legislation extends to England, Scotland, Wales and Northern Ireland (including the criminal offence created by clause 36 of the Bill), with the exceptions of clause 59 (on evidence in legal matters, which will be governed by the law in England and Wales) and Part 2 (on the Registration Service, which extends only to England and Wales). Further, any amendment or repeal effected by this Act has the same extent as the enactment to which it relates.

Delegated powers in the Bill: overview

5. A full list of the delegated powers, listed by clause, is as follows:

- Clause 6 – Official statistics
- Clause 11 – Pre-release access
- Clause 22 – Delegated functions
- Clause 44 – Power to authorise disclosure to the Board
- Clause 45 – Power to authorise disclosure to the Board: Scotland
- Clause 46 – Power to authorise disclosure to the Board: Northern Ireland
- Clause 47 – Power to authorise use of information by the Board
- Clause 48 – Power to authorise disclosure by the Board
- Clause 49 – Power to authorise disclosure by the Board: Scotland
- Clause 50 – Power to authorise disclosure by the Board: Northern Ireland
- Clause 71 – Commencement

These delegated powers are listed in a table in the annex.

Clause by clause analysis of delegated powers

Clause 6 – Official Statistics

6. Clause 6 states that official statistics includes all statistics produced by the Board, government departments, the Scottish Executive, the Welsh Ministers, a Northern Ireland department or any other person acting on behalf of the Crown.

7. The clause also gives Ministers of the Crown, the Scottish Ministers, the Welsh Ministers and Northern Irish departments the power to make orders to notify statistics produced by further bodies, meaning that all of the statistics produced by those bodies would be official statistics, or to notify particular statistical series or sets of series as official statistics. These orders may also remove these further statistics from the category of official statistics. Before orders are made specifying statistics produced by further bodies

3 As well as the First Minister for Wales and the Counsel General to the Welsh Assembly Government.
4 Statistics produced by the Board, government departments, the Scottish Administration, the Welsh Ministers, a Northern Ireland department or any other person acting on behalf of the Crown, cannot be removed from the category of official statistics.
as official statistics, the Board must be consulted, and it would be expected to give its view on whether it is appropriate for the statistics to be official statistics.

8. Clause 6 automatically covers the main bodies which are sources of official statistics. However, bodies such as the Health and Social Care Information Centre and the Higher Education Statistics Agency, which produce a range of statistics, including some statistics currently designated as National Statistics, would not automatically have all their statistics included in the category of official statistics (as defined in clause 6 (1)(a)). It is therefore expected that statistics produced by these bodies would be notified for inclusion in the category of official statistics through an order. In general, the kind of bodies whose statistics might be notified by order under this clause include local authorities and health authorities, and non-departmental public bodies that are not Crown bodies.

9. Once notification had been agreed by Parliament, statistics will be treated as official statistics for the purposes of the Act, and could be subject to monitoring by the Board (under clause 8) or be eligible for assessment as National Statistics (under clause 12).

10. Given their responsibility for the relevant statistics in their policy areas, Ministers will be responsible for making orders in their departmental area. For example, the Secretary of State for Health would notify statistics produced by health authorities. For devolved statistics, the Scottish Ministers, the Welsh Ministers and Northern Ireland departments would make the orders in relation to their respective devolved statistics.

11. Given the wide range of bodies beyond central government that might now and in the future produce official statistics, it is difficult to define in primary legislation exactly where the boundary of official statistics should lie. It is for this reason that the class of official statistics produced outside central government will be set out in orders. This allows an appropriate flexibility to include new statistics as they are developed and new bodies that take on the production of such statistics, as well as to remove statistics or bodies outside central government, if appropriate.

12. The orders are to be made via the affirmative resolution procedure; Parliament will therefore be able to scrutinise the statistics – beyond those produced in central government – notified to be part of, or removed from, the category of official statistics.

Clause 11 – Pre-release access

13. Clause 11 empowers the Treasury (on behalf of all Ministers of the Crown), and – in the case of wholly devolved statistics – the devolved administrations, by order, to set out rules and principles to govern the conditions under which Ministers and others may receive pre-release access to official statistics, in their final form.

14. To ensure a consistent policy approach, any order made by the Treasury or the relevant devolved administration, must be made following consultation with the other devolved administrations and the Treasury, as appropriate. In all cases, an order will be subject to the affirmative resolution procedure, giving Parliament (or the relevant devolved legislatures) the opportunity to scrutinise the draft order, and requiring its explicit approval before the order is made. After an order is made, the rules and principles set out in the order will be regarded as being included in, and will be assessed against as part of, the Code of Practice for National Statistics.

15. Pre-release access to statistics in their final form for Ministers and others is intended to give Ministers the opportunity to account for implications in their policy areas for which they are responsible, and to allow them, in certain circumstances, to act at the time statistics are released, for example to prevent a market disturbance.

16. Given this, the Government intends to provide for the continuation of pre-release access to official statistics by setting out the arrangements for pre-release explicitly in
secondary legislation, with any order under this clause subject to the affirmative resolution procedure. This will ensure Parliamentary scrutiny of the proposed arrangements, with Parliament’s consent being required before any order becomes binding.

17. This power is a discrete and well-defined derogation from the Board’s broader power to determine the Code of Practice for National Statistics, with any order made under clause 11 being limited to the specific topic of granting pre-release access to official statistics. As set out in clause 11, the order may include the circumstances in which pre-release access may be granted; descriptions of statistics for which pre-release may be granted; the persons to whom pre-release may be granted; the period during which pre-release may be granted and the conditions subject to which pre-release may be granted. The rules and principles in the order may make different provision for different cases, and allow for the exercise of discretion by persons responsible for official statistics.

18. The use of secondary legislation, rather than putting the arrangements on the face of the primary legislation, also provides sufficient flexibility to enable arrangements to be adapted to different circumstances and to evolve over time, while ensuring that Parliament (and the relevant devolved legislatures, in the case of devolved statistics), has the opportunity to engage with, and approve, any changes.

Clause 22 – Delegated functions

19. This clause allows a Minister of the Crown, and the respective devolved administrations in Wales and Northern Ireland, to delegate to the Board any of the functions relating to the production of statistics for which they have responsibility.

20. The Chancellor of the Exchequer currently delegates certain Ministerial functions under the Statistics of Trade Act 1947 to the Director of the ONS. This provision will allow this kind of delegation to continue in the future, for example, allowing the Chancellor of the Exchequer to delegate these functions to the new Board.

21. The clause does not provide for any Parliamentary procedure. This clause only allows for the delegation of those functions relating to the production of statistics that Parliament has given to Ministers or that Ministers have under common law. Furthermore, the nature of the delegation will be limited to delegation to the Board. This clause does not, therefore, provide for any Parliamentary procedure, insofar as the legislation in which the production functions is given to the relevant Minister will not change by virtue of the delegation itself, and accountability will remain with the Minister to whom Parliament has already given that function. Although the clause would also permit the amendment of any enactment, such amendments can only be of a consequential or incidental nature, and so this does not confer the power to make substantive changes to the legislation in question.

Clauses 44 to 50 – Powers to authorise disclosure / use of information

22. Clauses 44, clause 47 and clause 48 provide the Treasury with power to make regulations:

- authorising the disclosure of information from a public authority to the Board (clause 44);
- authorising use of information by the Board, where the Board currently may receive information but is subject to a restriction on use of that information (clause 47); and,
- authorising the disclosure of information by the Board to a public authority (clause 48).

23. Clause 45 and clause 49 provide the Scottish Ministers with a power to make regulations:
• authorising the disclosure of information from a Scottish public authority to the Board (clause 45); and,
• authorising the disclosure of information by the Board to a Scottish public authority (clause 49).

24. Clause 46 and clause 50 provide a Northern Ireland Department with a power to make regulations:
• authorising the disclosure of information from a Northern Ireland Department to the Board (clause 46); and,
• authorising the disclosure of information from the Board to a Northern Ireland public authority (clause 50).

25. The power to make regulations in clauses 44 to 50 may be exercised where the disclosure or use (use in clause 47 only) of the information would otherwise be prohibited by a rule of law, where the bars to disclosure are in an Act passed before this Act, or where the public authority would not otherwise have the power to make the disclosure (clause 44, 45 and clause 46 only).

26. Regulations made under the delegated powers in clauses 44 to 50 will provide for further data sharing. The powers include the power to amend enactments and to make such incidental and consequential provision as may be necessary. The affirmative procedure is prescribed.

27. It is not possible to anticipate every case in which the Board might require access to administrative data in departments; some data sets have not yet been created, for example, and statistical – and policy – needs are likely to change such that existing data sets might become useful for statistical analysis. Providing for delegated powers therefore ensures the flexibility for data sharing for statistical purposes to adapt to changing user needs, and developing data sets and statistical practice.

28. However, recognising the legitimate concerns around confidentiality, the legislation includes safeguards to ensure that the circumstances in which the powers may be used are tightly constrained. Improved confidentiality provisions – applying to both business and personal data – have also been stipulated on the face of the Bill (at the confidentiality obligation in clause 36\(^5\)), with sharing in violation of the confidentiality obligation incurring criminal sanctions.

29. The circumstances in which the power can be used, and the purposes for which it may be used are limited and focused:
• Regulations made under the powers in clauses 44 to 47 may only authorise disclosure for statistical purposes (in practice, all of the Board’s functions are statistical).
• In the case of regulations made under clauses 48 to 50, the regulations may only authorise disclosure for the purposes of the statistical functions of the public authority to which the disclosure is made.
• The information disclosed may only be used by the Board or by the public authority for the specific purpose(s) for which the disclosure is authorised.

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\(^5\) Note that, in the application of section 36 to personal information disclosed under the regulations, two exemptions to the general confidentiality obligation (given in 36(4)(c) and (h), which concern, respectively, disclosure for the purpose of enabling or assisting the Board to exercise any of its functions, and disclosure to an approved researcher) do not apply. In addition, the regulations may contain consequential and supplementary provisions to prohibit or restrict further disclosure or authorise further disclosure.
• In respect of clauses 44, 47 and 48, the Treasury may only make the regulations with the consent of another Minister of the Crown or, where appropriate, the Welsh Ministers. Before making the regulations the Treasury (and the Welsh Ministers or the Minister of the Crown whose consent is required) must be satisfied both that the disclosure is required by the Board (or the public authority) to enable it to carry out its statistical function or functions and that the disclosure is in the public interest.

• The regulations may not amend the Human Rights Act 1998 and the Data Protection Act 1998.

30. In exercising the delegated powers in clause 44 and 48, the Treasury may not make regulations authorising disclosure by or to a Northern Ireland public authority or a Scottish public authority.

31. Clause 45 and 49 provide the Scottish Ministers with a power to make regulations (with the consent of the Treasury) authorising disclosure to or from the Board. It is necessary to leave this matter to delegated legislation for the same reasons set out above. The same limitations and restrictions on the use of the power apply and the Government expects the power would be used in the same way. The regulations will be made by statutory instrument, laid in draft and not made until the Scottish Parliament has approved them.

32. Clause 46 and 50 provide a Northern Ireland department with a power to make regulations authorising disclosure to and from the Board. It is necessary to leave this matter to delegated legislation for the same reasons set out above. The same limitations and restrictions on the use of the power apply and we expect the power will be used in the same way. The regulations will be made by statutory rule and will be subject to affirmative resolution within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1953 c.33 (NI).

33. Regulations under clauses 44, 47 and 48 are made by the Treasury, acting in its role as having the residual legislative responsibility for the Board, with the consent of a Minister of the Crown. This would generally be the Minister of the Crown responsible for the public authority that would be involved in the data sharing permitted by the regulation. In the same way, where the body making the regulation is the Scottish Ministers or a Northern Ireland Department, under clauses 45, 46, 49 and 50, the consent of the Treasury is required.

Clause 71 – Commencement

34. Clause 71 enables the Treasury to bring the provisions of the Act into force by order. This is a standard power to bring the provisions of the Act into force and as is usual with commencement orders the power does not specify a Parliamentary procedure. The order may include consequential, transitional or incidental provision.

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6 The definition of a “Northern Ireland public authority” is set out in clause 62 – a Northern Ireland public authority is a public authority whose functions are exercisable only or mainly in or as regards Northern Ireland and relate only or mainly to transferred matters.

7 In so far as it is exercising functions that relate to matters that are not reserved matters.
Annex: Table of Regulation Making Powers

<table>
<thead>
<tr>
<th>Measure</th>
<th>Clause number</th>
<th>What the regulation making power provides</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power to notify official statistics beyond those produced by central government</td>
<td>Clause 6</td>
<td>Allows Ministers of the Crown, the Scottish Ministers, the Welsh Ministers and Northern Irish departments to make orders to notify statistics as official statistics (beyond those produced by central government).</td>
</tr>
<tr>
<td>Power to set out rules and principles to govern pre-release access to statistics</td>
<td>Clause 11</td>
<td>Allows the Treasury and – in the case of wholly devolved statistics, the devolved administrations – by order to set out rules and principles to govern the conditions under which Ministers and others may receive pre-release access to official statistics.</td>
</tr>
<tr>
<td>Power to delegate functions</td>
<td>Clause 22</td>
<td>This function allows a Minister of the Crown, and the devolved administrations in Wales and Northern Ireland, to delegate to the Board any of their functions relating to the production of statistics.</td>
</tr>
<tr>
<td>Power to authorise disclosure to the Board</td>
<td>Clause 44</td>
<td>This power allows the Treasury to make regulations authorising the disclosure of information from a public authority to the Board.</td>
</tr>
<tr>
<td>Power to authorise disclosure to the Board: Scotland</td>
<td>Clause 45</td>
<td>This power allows Scottish Ministers to make regulations authorising the disclosure of information from a Scottish public authority to the Board.</td>
</tr>
<tr>
<td>Power to authorise disclosure to the Board: Northern Ireland</td>
<td>Clause 46</td>
<td>This power allows a Northern Ireland Department to make regulations authorising the disclosure of information from a Northern Ireland public authority to the Board.</td>
</tr>
<tr>
<td>Power to authorise use of information by the Board</td>
<td>Clause 47</td>
<td>This power allows the Treasury to make regulations authorising the Board to use information received by the Board where the Boards use of information is restricted.</td>
</tr>
<tr>
<td>Power to authorise disclosure by the Board</td>
<td>Clause 48</td>
<td>This power allows the Treasury to make regulations authorising the disclosure of information by the Board to a public authority.</td>
</tr>
<tr>
<td>Power to authorise disclosure by the Board: Scotland</td>
<td>Clause 49</td>
<td>This power allows Scottish Ministers to make regulations authorising the disclosure of information by the Board to a Scottish public authority.</td>
</tr>
<tr>
<td>Power to authorise disclosure by the Board: Northern Ireland</td>
<td>Clause 50</td>
<td>This power allows a Northern Ireland department to make regulations authorising the disclosure of information from the Board to a Northern Ireland public authority.</td>
</tr>
<tr>
<td>Power to make commencement orders</td>
<td>Clause 71</td>
<td>This power enables the Treasury to bring the provisions of the Act into force by order.</td>
</tr>
</tbody>
</table>
APPENDIX 4: WELFARE REFORM BILL: GOVERNMENT AMENDMENTS

Letter from Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department for Work and Pensions to the Chairman

1. I have today tabled a number of Government amendments for Third Reading which is due to take place on 27 March. I enclose a copy of them for information and because in two cases changes are made to the regulation making powers.

2. The Committee reported on the Bill in its 5th Report of this Session after the Bill’s introduction from the House of Commons on 10 January. After consideration of the Bill in Grand Committee at Report on 19 March I undertook to consider further some of the measures and return with changes, as I have today. I would be grateful if the Committee accepted this letter as a supplementary memorandum about those changes which affect the delegated powers in the Bill. The clause numbers below refer to the 19 March draft of the Bill.

3. Clause 11 allows the Secretary of State to make regulations requiring claimants eligible for ESA, but not so functionally restricted as to be unable to engage in work-related activity, to have an additional, work-focused health-related assessment. Work-focused health related assessments will be carried out by healthcare professionals.

4. Clause 62 extends the power of the Secretary of State and the eligible member of an appeal tribunal to refer a person to an approved health care professional for a medical examination and report instead of just to a doctor. Such a reference is made where the Secretary of State or the eligible member of an appeal tribunal considers it necessary for the purpose of providing him with information for use in making a decision on entitlement to benefit or to aid the appeal tribunal’s determination of an appeal.

5. Previously Clause 11, subsection (8) and Clause 62, subsection (5) gave a broad definition of health care professional. Amendments tabled by the Government seek to change these definitions to state more explicitly who we mean by a health care professional. These delegated powers are conferred on the Secretary of State, are exercisable by statutory instrument and will be subject to the negative resolution procedure.

6. The delegated powers that are introduced by these amendments will allow us to prescribe in regulations other regulated health care professionals that are able to carry out medical examinations for the purpose of relevant social security benefits. Our intention is to always use a health care professional with the appropriate skills to carry out an assessment and the skills needed may be different for different types of assessments. Although we currently only have plans to use the health care professionals now specified on the face of the legislation we may in the future identify a role for other regulated health care professionals. This delegated power will allows us to up-date our definition accordingly.

7. This power is subject to the negative resolution procedure. This is the usual procedure for secondary legislation made under Social Security legislation because it delivers a flexible system that can respond effectively to changes in the future.

8. Clause 16 allows contracted out providers in the private and voluntary sector to exercise functions of the Secretary of State relating to conditionality. The amendments to this Clause mean that regulations can no longer allow contracting out of decisions leading to sanctions. They do that by creating a category of excluded decisions in new subsection (2A) which covers:
• decisions that a person has failed to comply with a conditionality requirement under Clauses 11, 12 or 13 (i.e. WFHRA, WFI and work related activity);
• decisions on whether a person had good cause for not complying with the conditionality requirement;
• decisions about the reduction in benefit as a result of a person failing to comply with a conditionality requirement without good cause.

9. The other amendments to the Clause ensure:
• that regulations cannot allow the Secretary of state to authorise contractors to make excluded decisions;
• Regulations cannot allow the Secretary of State to authorise contractors to revise excluded decisions;
• that regulations cannot allow the Secretary of State to authorise contractors to supersede excluded decisions;
• that regulations cannot allow the Secretary of State to authorise contractors to exercise certain functions under Chapter 2 of Part 1 of the Social Security Act 1998 where these relate to excluded decisions.

10. There is a consequential amendment to Clause 26. Clause 26(1)(c) provides that regulations relating to contracting out of decisions leading to sanctions are to be subject to the affirmative resolution procedure. As the power to contract out such decisions is being removed then the Clause 26(1)(c) will become redundant.

11. Clause 31, by inserting new sections in to the Social Security Contributions and Benefits Act 1992, would provide for the reduction, or non-payment, of housing benefit where certain conditions are met. The effect of this amendment is that the piloting of the sanction will go ahead, which will ensure that the sanction works as intended and that unforeseen consequences for vulnerable groups are avoided:
• the proposed subsection (3) would bring the provisions (of clause 31) to an end at 31 December 2010. The regulations will cease to have effect after this date, although it would be possible for the regulations to cease to have effect before that date if the regulations so provided;
• the proposed subsection (4) would enable the Secretary of State to make regulations preventing anything which had been done under section 31 (other than pilot schemes) from having effect after 31 December 2010. The intention is that the pilots – and any sanctions in place - will end before 31 December 2010 and so it is unlikely that subsection (4) will be used. However, it is provided as a safeguard. As an order made under this subsection would remove restrictions in place and would not introduce anything new, we feel that the negative procedure is appropriate.

12. I am copying this letter to Lord Skelmersdale and Lord Oakeshott of Seagrove Bay, to all the other peers who spoke at Report and I am placing a copy in the Libraries of both Houses. I am also copying this letter to the chairman of the Joint Committee on Human Rights for information.

22 March 2007
APPENDIX 5: JUSTICE AND SECURITY (NORTHERN IRELAND) BILL: GOVERNMENT RESPONSE

Letter from Paul Goggins MP, Parliamentary Under Secretary of State, Northern Ireland Office to the Chairman

1. I was very grateful for your 6th Report of this session, which includes the conclusions of the Delegated Powers and Regulatory Reform Committee on the Justice and Security (Northern Ireland) Bill. As Bill Minister, I wanted to respond in detail to the points you have raised.

2. In paragraph 6 of your report, you note that rules of court in Northern Ireland are subject to the negative resolution procedure under section 56 of the Judicature (Northern Ireland) Act 1978. I am very grateful to you for making this clarification in your report.


4. The Justice and Security (NI) Bill does not seek to re-create Part VII, but seeks to deliver powers that are necessary for the police, army and Secretary of State in the Northern Ireland of the 21st Century. Clearly it is not surprising that some of these powers will reflect similar powers in previous legislation.

5. However, given these powers represent the absolute minimum necessary for the police and armed forces to operate effectively in the 21st Century we do not believe the system of annual renewals in Part VII of the Terrorism Act would be appropriate. Parliamentary scrutiny of the powers can, and will, continue through parliamentary questions and debates. We will continue to collect statistics on the use of the powers which will inform debates on the issue.

6. While we hope Northern Ireland continues to change for the better we believe there are a number of remaining threats. A power allowing the Secretary of State to remove individual powers through affirmative resolution order, as and when it is deemed that they are unnecessary, therefore seems appropriate to us in the circumstances.

7. Concerning the abolition of the deputy Ministerial office, I entirely accept the force of the Committee’s point in paragraph 13 of the report and agree that there should be no parliamentary procedure for the order in question. We will be seeking approval to bring forward amendments to reflect the Committee’s comments.

8. You note that paragraph 12 of Schedule 6 contains a power enabling the Secretary of State by order to increase the 12 month period for the duration of a licence under the interim arrangements for the regulation of the private security industry. I am very sorry that the memorandum we provided to the Committee did not discuss this issue. You are right that no parliamentary procedure attaches to the power (though paragraph 12(4) provides for the order to be laid before Parliament) and that this is the position under paragraph 8(3) of Schedule 13 to the 2000 Act.

9. We think that no Parliamentary procedure is necessary because the power is very tightly drawn. The scheme in Schedule 6 is also only designed to cover the interim period before the Security Industry Authority take on licensing in Northern Ireland in line with arrangements in the Private Security Industry Act 2001.

10. Once again, I am very grateful to you for considering the Bill. Your reports on legislation are very informative and add significant value to the deliberations of Parliament.

21 March 2007