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

Current membership
The members of the Delegated Powers and Regulatory Reform Committee are:
- The Lord Acton
- The Lord Armstrong of Ilminster GCB CVO
- The Lord Brett
- The Viscount Eccles CBE
- The Lord Faulkner of Worcester
- The Baroness Fritchie DBE
- The Baroness Gardner of Parkes
- The Lord Goodhart QC (Chairman)
- The Baroness Scott of Needham Market
- The Lord Shaw of Northstead DL

Registered Interests
Members’ registered interests may be examined in the online Register of Lords’ Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Publications
The Committee’s reports are published by the Stationery Office by Order of the House. All publications of the Committee are on the internet at www.parliament.uk/parliamentary_committees/dprr.cfm.

General Information
General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at www.parliament.uk/about_lords/about_lords.cfm.

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

Historical Note
In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. Following the passage of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act and the Committee became the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 expanded the order-making power to include regulatory reform and the Committee, renamed the Delegated Powers and Regulatory Reform Committee, took on the scrutiny of regulatory reform proposals under that Act. The Committee will scrutinise regulatory reform orders under the successor to the 2001 Act, the Legislative and Regulatory Reform Act 2006.
1. We reported on this bill in our 5th Report (HL Paper 44). We have now been invited to consider one of a number of Government amendments tabled for Report Stage. The Home Office has provided a supplementary memorandum, printed at Appendix 1.

2. The amendment, No 51 on the marshalled list, HL Bill 59-I, inserts a new subsection (5A) into clause 44 of the bill to confer power on the Secretary of State to amend Schedule 3 by order. (An associated amendment (No 126 on the marshalled list) to clause 76(3) makes the exercise of this new power subject to the affirmative procedure.)

3. Under clause 39 of the bill, a person commits an offence if he does an act capable of encouraging or assisting the commission of an offence and intends to encourage or assist its commission. Clause 40 provides that the person doing such an act commits an offence where he believes that the offence will be committed and that his act will encourage or assist its commission. Clause 44(4) and (5) provide that, for the purposes of clause 40, offences listed in Schedule 3 are to be disregarded. Schedule 3 at present contains a list of some 30 offences, and Government amendments Nos 52 – 58 on the marshalled list will add a further 12. The new power in clause 44(5A) will enable the amendment of Schedule 3 by order.

4. In its supplementary memorandum, the Home Office justifies the new power as a means to enable it to add further offences to Schedule 3 as it identifies them. While acknowledging that the power could be used to remove offences as well, the Home Office does not explain why the Secretary of State should have the power, after enactment of the bill, to impose by order criminal liability for conduct which Parliament has decided should not be an offence. The Committee is particularly concerned that the subsequent removal of an offence listed in Schedule 3 could, by virtue of clause 53, expose a person to criminal penalties far in excess of those which normally apply to offences created by subordinate legislation. For example, the power to create new offences by order under the Legislative and Regulatory Reform Act 2006 is limited to offences carrying a maximum penalty of not more than two years’ imprisonment.

5. **The Committee draws to the attention of the House the implications of the exercise of the power conferred by the proposed new subsection (5A) in so far as it enables the Secretary of State to remove an offence from Schedule 3. The House may wish to invite the Government to reconsider the scope of the new power.**
APPENDIX 1: SERIOUS CRIME BILL [HL]

Supplementary memorandum supplied by the Home Office

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

2. New subsection (5A) to be inserted into clause 44: Power to amend Schedule 3, listed offences

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

3. Part 2 of the Bill contains new offences of assisting and encouraging crime. These offences will replace the common law offence of incitement. Clause 39 contains the offence of doing an act capable of assisting or encouraging an offence with the intent that the offence should be carried out. Clause 40 contains the offence of doing an act capable of assisting or encouraging an offence believing that it will happen. Clause 41 contains the offence of doing an act which is capable of assisting or encouraging a number of offences believing one of them will happen but not knowing which.

4. Schedule 3 contains “listed offences”. These include statutory forms of incitement and inchoate offences of attempt and conspiracy. These offences are to be disregarded when reckoning whether an act is capable of encouraging or assisting the commission of an offence under clauses 40 and 41, as set out in clause 44(4). The purpose behind listing these offences is to prevent inchoate liability from extending too far. If someone has done an act capable of encouraging or assisting one of the offences listed in Schedule 3 but he has only acted with belief that the offence will be committed rather than intention (i.e. the mens rea for the offences in clauses 40 or 41), he will not be liable to prosecution. He can only be prosecuted for encouraging or assisting one of the offences listed in Schedule 3 if he has acted with intent, and is therefore liable under clause 39.

5. The offences in Part 2 are based on the Law Commission Report on Inchoate Liability for Assisting and Encouraging Crime. The Draft Bill accompanying the report contained a Schedule of listed offences, which the Bill as introduced replicated at Schedule 3. However, we have since identified other offences which we believe should be included in Schedule 3. These are being added by way of amendment at the same time as this amendment, for example the offences under sections 19 and 20 of the Misuse of Drugs Act 1971. However, we are still involved in checking that the list in Schedule 3 is comprehensive, and while we are endeavouring to complete this exercise during the passage of the Bill, the order making power will enable us to amend this Schedule at a later stage should it be necessary.

6. New subsection (5A) will therefore provide a power for the Secretary of State to amend the Schedule. This is a power which will be used to amend Schedule 3 where it is felt that the extension of inchoate liability should be limited to occasions where someone has acted with intent, and that therefore it is necessary to add the offence to Schedule 3. However, it could also be used to remove an offence from Schedule 3 if it is felt that criminal liability should extend to someone who assists or encourages that offence, even if he does so without intending the offence to be committed.
7. An order under clause 44(5A) would be subject to the affirmative resolution procedure. The Department considers that this would provide an appropriate level of Parliamentary scrutiny for an order that would affect criminal liability.