



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

15th Report of Session 2016–17

**Neighbourhood
Planning Bill**

**Commonwealth
Development Corporation
Bill: Government Response**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee are:

Baroness Drake	Lord Lisvane
Baroness Fookes (<i>Chairman</i>)	Lord Moynihan
Lord Flight	Lord Thomas of Gresford
Baroness Gould of Potternewton	Lord Thurlow
Lord Jones	Lord Tyler

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Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, 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 hlddelegatedpowers@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. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Fifteenth Report

NEIGHBOURHOOD PLANNING BILL

1. The Neighbourhood Planning Bill had its Second Reading on 17 January. According to the explanatory notes accompanying the Bill, it has two key aims:

“First, to help identify and free up more land to build homes on to give communities as much certainty as possible about where and when development will take place. Second, to speed up the delivery of new homes, in particular by reducing the time it takes to get from planning permission being granted to building work happening on site and new homes being delivered.”

2. The Department for Communities and Local Government (DCLG) has provided a helpful memorandum about the delegated powers in the Bill,¹ and a supplementary memorandum² concerning Government amendments tabled on 24 January for Grand Committee. We wish to draw the following matters to the attention of the House.

Clause 12—Restrictions on the imposition of planning conditions

Background

3. DCLG’s first memorandum explains that planning conditions “are used by local planning authorities to make a proposed development which would otherwise be unacceptable in planning terms, acceptable such that it may be granted planning permission”.³
4. A local planning authority, when granting planning permission, may do so unconditionally or subject to such conditions as it thinks fit: see section 70(1) (a) of the Town and Country Planning Act 1990 (“the 1990 Act”).
5. DCLG has issued guidance on the use of planning conditions.⁴ This explains that the power in section 70 “must be interpreted in light of material factors such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law”. The guidance quotes the National Planning Policy Framework which states that planning conditions should only be imposed where they meet six tests. They must be:
 - necessary;
 - relevant to planning;
 - relevant to the development to be permitted;

1 Department for Communities and Local Government, *Neighbourhood Planning Bill: Delegated Powers Memorandum*: <http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0086/Delegated-Powers-Memorandum.pdf> [accessed 27 January 2017]

2 Department for Communities and Local Government, *Neighbourhood Planning Bill: Supplementary Delegated Powers Memorandum*: <http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0086/Supplementary-Delegated-Powers-Memorandum.pdf> [accessed 27 January 2017]

3 Para 61.

4 Department for Communities and Local Government, *Planning practice guidance: Use of planning conditions*: <https://www.gov.uk/guidance/use-of-planning-conditions> [accessed 27 January 2017]

- enforceable;
 - precise; and
 - reasonable in all other respects.
6. The guidance then sets out a long list of particular types of condition which, the Department considers, would not meet the six tests.
 7. The person who applied for planning permission has a right of appeal to the Secretary of State against a decision by the local planning authority to impose a planning condition.⁵ Most appeals are determined by a planning inspector, who can hold an inquiry.⁶ If a local planning authority imposed a condition contrary to the guidance, the appeal would be likely to succeed unless the authority had good reasons for the condition, for example because of special local factors relating to a particular development.
 8. Clause 12 contains new provisions to restrict the power of local planning authorities to impose planning conditions.⁷

New section 100ZA(1)—Power to prohibit planning conditions by regulations

9. The Secretary of State is to have power by regulations:
 - to prevent local planning authorities from imposing particular types of planning conditions in any circumstances at all or only in particular circumstances; and
 - to stipulate that no planning conditions at all are to be imposed on particular types of grants of permission.

(See subsection (1) of the new section 100ZA inserted in the 1990 Act.)

10. The Secretary of State has to be satisfied that the regulations are appropriate for the purpose of ensuring that any condition imposed on a grant of planning permission for the development of land is (in broad terms) necessary, relevant, precise and reasonable: see subsection (2).
11. The Secretary of State must also carry out a public consultation exercise before making regulations: see subsection (3).
12. The memorandum explains that the Government want to take this power because “there is evidence that some local planning authorities are imposing unnecessary and inappropriate planning conditions which do not meet the tests in national policy, resulting in delays to the delivery of new development”.⁸

⁵ See section 78 of the 1990 Act.

⁶ See Schedule 6 to the 1990 Act.

⁷ Government amendments tabled for Grand Committee amend new section 100ZA so that the regulation-making powers it confers would apply only to “a relevant grant of planning permission”, i.e. on a grant of permission to develop land on an application under Part 3 of the 1990 Act (which is usually made to a local planning authority). Conditions attached to other types of planning permission, e.g. ones made by development order, would be outside the scope of the power. The amendments are further explained in paras 20 to 29 of the supplementary memorandum.

⁸ Para 64.

13. The memorandum refers to the Department's planning Guidance to illustrate examples of the types of condition that the proposed power would prohibit. They include: "those which may unreasonably impact on the deliverability of a development, those which place unjustifiable and disproportionate financial burdens on an applicant, or those which duplicate requirements to comply with other statutory regimes".⁹

14. The memorandum further explains:

"While the Guidance provides this steer, the Government is seeking to give the list of conditions that should be avoided statutory force, to ensure that such conditions are not imposed and that development can proceed without any undue delay caused by the imposition of unnecessary planning conditions. This description of circumstances and conditions has been left to secondary legislation so that the power is capable of being used in the future to prohibit the use of unnecessary and particularly onerous conditions which impede completion of development. Such delegation will also allow the Government flexibility in updating the list, in response to evidence provided by stakeholders without imposing unduly on Parliamentary time but whilst still engaging those affected through a public consultation, which is required under 100ZA(3) ...

The Government acknowledges that the power to prescribe the circumstances where conditions may or may not be imposed and to set out the descriptions of such conditions is wide. However, the Government considers a delegation appropriate in these circumstances."¹⁰

15. We are concerned however, that the power would allow the Secretary of State to proscribe conditions in relation to *any* type of planning conditions when the key aims of the Bill are to facilitate the building of new homes¹¹. Surprisingly, no reason for this is given in the memorandum.
16. **We consider it inappropriate for the Government to be given a power which could be used to go well beyond the stated aims of the Bill; and so we recommend that it should apply only to planning conditions for housing developments.**

Parliamentary procedure

17. The current power of the Secretary of State to give guidance discouraging a local planning authority from imposing conditions he or she considers unreasonable is to be replaced with a power to prohibit such conditions completely. The authority would have no opportunity to justify them.
18. The Government have published a policy document setting out how they intend to exercise the Bill's delegated powers.¹² It contains draft regulations specifying five types of condition that a local planning authority may not impose.¹³ There would, of course, be nothing to prevent the Secretary of State from using the new power to prohibit many more conditions.

9 Para 68.

10 Paras 68 to 70.

11 See para 1 of this Report.

12 Department for Communities and Local Government, *The Neighbourhood Planning Bill: Further information on how the Government intends to exercise the Bill's delegated powers, December 2016*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578317/Further_information_on_how_the_Government_intends_to_exercise_the_Neighbourhood_Planning_Bill_s_delegated_powers.pdf [accessed 27 January 2017]

13 See Annex A of the policy document.

19. The regulations would attract only the negative Parliamentary procedure. This is the justification given in the memorandum:

“Firstly, the Government must consult prior to the exercise of the power, and therefore any exercise of the power will receive considered input from interested groups. Secondly, the detail of the planning application procedure is currently subject to the negative resolution procedure under the 1990 Act, and these provisions are intended to add to existing powers. For example, article 35 ... of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ... regulates matters around the imposition of conditions by requiring full reasons for each condition imposed ... Thirdly, frequent modification of the description of the conditions and of the circumstances in which conditions may or may not be imposed is likely to be necessary in order to keep pace with changes in planning and more generally in the housing market and, therefore, to ensure the regulations remain effective at dealing with conditions that unnecessarily impact on development. The negative procedure would allow for such amendments to the regulations to be carried out without imposing unduly on Parliamentary time.”¹⁴

20. We do not find these arguments persuasive. In our view, the negative procedure is not an adequate level of Parliamentary scrutiny for the exercise of these new powers, which could substantially restrict the ability of local planning authorities to attach conditions to the grant of any type of planning permission. The regulations will be of much greater significance than the matters dealt with in the 2015 Order referred to in the memorandum.
21. We have further noted the analogous provision in section 19A(1) of Licensing Act 2003. This confers a power on the Secretary of State to specify by order conditions relating to the supply of alcohol which may be imposed by local authorities when granting premises licences. The *affirmative* procedure applies to the order.¹⁵
22. **We therefore recommend that the affirmative procedure should apply to the exercise of the powers conferred by new section 100ZA(1).**

New section 100ZA(5) to (7)—Pre-commencement conditions

23. New section 100ZA(5) prohibits a local planning authority from granting planning permission subject to a “pre-commencement condition” *without the written agreement of the person applying for permission as to the terms of the condition*.¹⁶
24. A “pre-commencement condition” is a condition imposed on the grant of planning permission which must be complied with:
- before any building or operation comprised in the development is begun; or
 - where the development consists of a material change in the use of the building or land, before the change is begun (see subsection (7)).

14 Para 75.

15 See the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 (SI 2010/860).

16 Emphasis added.

25. The memorandum explains that the Government wish “to ensure that pre-commencement conditions, which require action before any development can take place, are not imposed unnecessarily, for example relating to matters that are capable of being discharged later in the development process. This can impose unnecessary costs on development and delay the completion of new development”.¹⁷
26. We wanted to see some specific examples of pre-commencement conditions to help us understand the effect of subsection (5). None appeared to be included in the explanatory material accompanying the Bill. At our request, DCLG have therefore provided the following list setting out of details that developers have had to provide to local planning authorities before building works could begin:
- full details of a play area;
 - details of all lighting on the development including siting, design and lux levels;
 - installation of superfast broadband infrastructure;
 - a public art statement setting out details of locations of all public art;
 - approval of all materials;
 - details of types and colours of roofing materials;
 - precise location of bin collection points for specific plots;
 - full details of soft landscaping;
 - noise mitigation works relating to later phases of site delivery.¹⁸
27. The Secretary of State is, however, to have power to relax the prohibition of conditions of this type. Regulations can set out circumstances in which pre-commencement conditions may be imposed without the written agreement of the person applying for permission (see subsection (6)).
28. The Government have published draft regulations indicating how they intend to exercise this power.¹⁹ A local planning authority will be allowed to impose a pre-commencement condition without the applicant’s agreement only in one type of case. This is where the authority gives written notice of the proposed condition, but the applicant fails to provide a substantive response within 10 working days.
29. We are concerned that there is no duty to consult before making regulations about pre-commencement conditions. In our view, the Secretary of State should be required to consult not only developers but also local planning authorities and other interested parties. They may all have strong views as to when pre-commencement conditions should be permitted without the agreement of the person applying for permission. It is important that their comments should inform the preparation of the regulations.

17 Para 65.

18 DCLG informs us that these are examples of pre-commencement conditions deemed inappropriate in a recent report by the House Builders’ Federation.

19 See Annex A of the policy document referred to in footnote 12.

30. **We therefore recommend that the Secretary of State should be required to consult before making regulations under subsection (6). If this amendment is made, we would regard the negative procedure as an adequate level of Parliamentary scrutiny, otherwise we recommend the affirmative procedure.**

Clause 24—Temporary possession of land: supplementary provisions

Background

31. Clause 14 confers a power on an authority to take possession of land temporarily for the purposes of a proposed scheme of development. Existing legislation only allows for a compulsory purchase order either to permit an authority to acquire land permanently or to acquire permanent new rights over land.²⁰
32. We have thought of one scenario to illustrate how the power could be used.²¹ An authority may want to acquire two pieces of land, Plots A and B, in connection with a road scheme. The road will be constructed on Plot A, which would be acquired compulsorily and permanently, but Plot B may also be needed to allow for access to Plot A. Clause 14 would allow the authority to acquire Plot B temporarily to construct a short-term access route and, where necessary, to remove any buildings and vegetation. Plot B would be returned to the land owner after the new road on Plot A was finished.
33. Clauses 15 to 23 describe the procedures that must be followed to acquire land temporarily. They also provide for the payment of compensation to the land owner, and specify the powers of the acquiring authority while in temporary possession of the land.

Power to make supplementary provision

34. Clause 24(1) allows the Secretary of State and Welsh Ministers²² to make further provision by affirmative procedure regulations in relation to:
- the authorisation and exercise of the power to take temporary possession of land; and
 - the circumstances in which an acquiring authority may be authorised to acquire land permanently after initially being authorised only to take temporary possession of it.
35. The memorandum gives the following justification for clause 24:
- “Regulations will limit the temporary possession power in different ways for different circumstances, as explained above. There will be different types of land, different areas, and different acquiring authorities which might be involved. The Government anticipates that it will be necessary over time to make different provision in respect of different acquiring authorities and for different types of land. This is because the temporary possession power is a new power, and the Government will want to

²⁰ See the memorandum, para 91.

²¹ We could not find any concrete examples in the explanatory material accompanying the Bill.

²² The Welsh Ministers make the regulations, under the affirmative procedure in the National Assembly for Wales (see clause 39(3)), where they (the Welsh Ministers) are the acquiring authority or the confirming authority. In other cases, they are made by the Secretary of State under the affirmative procedure in the UK Parliament (see clause 39(2)).

respond to evidence gathered about how it is used to see what further limits need to be prescribed. Both the need to further extend or limit the temporary possession power over time, and the level of detail involved in these limitations make Regulations the most suitable legislative vehicle for these provisions.”²³

36. Subsection (2) sets out a list of matters that could be dealt with in the regulations. We draw the House’s attention in particular to the powers which would allow the Secretary of State and Welsh Ministers:
- to exclude or modify the temporary possession provisions in clauses 14 to 26 in particular cases or types of case (see paragraph (a)); and
 - to make provision about reinstatement of land subject to temporary possession (see paragraph (i)).

Excluding or modifying Chapter 1 of Part 2 in particular cases

37. DCLG’s policy document explains that the power in subsection (2)(a) to exclude or modify the provisions of Chapter 1 of Part 2 could be exercised:

“so that Orders under the Pipe-lines Act 1962 and the Gas Act 1965 will be able to include temporary possession provisions similar to those that will be available to similar bespoke consenting regimes [in the Transport and Works Act 1992 and the Harbours Act 1964]”.²⁴

38. However, the power goes much further than this: it would enable the regulations to make substantial changes to clauses 14 to 26 in a wide range of cases, for example by excluding the provisions about compensation.
39. **We consider that subsection (2)(a) is inappropriately wide, and should be re-drafted to reflect the narrow policy intention referred to in the DCLG document.**

Reinstatement

40. There is nothing on the face of the Bill to compel an acquiring authority to reinstate land at the end of the temporary possession. This is instead to be left to the discretion of the Secretary of State and Welsh Ministers. Subsection (2)(i) provides merely that regulations “*may* require an acquiring authority to take *certain* steps in relation to the reinstatement of land subject to temporary possession”.²⁵
41. While we note from the DCLG policy document that Ministers intend to provide in the regulations for land to be reinstated “to the reasonable satisfaction of the owner of the land”²⁶, there is nothing to prevent this from being left out of future regulations. Moreover, neither the Bill nor the policy document refer to provisions for resolving disputes about reinstatement.

23 Para 100.

24 See para 47 of the document referred to in footnote 12. No draft regulations are provided for clause 24.

25 Emphasis added.

26 Para 64.

42. In our view, it is inappropriate to leave to the discretion of the Secretary of State or Welsh Ministers the question of whether to include in the regulations provisions about re-instatement. This will be an issue of central importance to the owners of land taken into temporary possession. **We recommend that clause 24 should be amended so as to impose a duty on the Secretary of State and Welsh Ministers to make regulations:**

- **about reinstatement of land at the end of the period of temporary possession; and**
- **for the resolution of disputes by an independent arbiter.**

Consultation

43. More generally, we note that clause 24 contains no consultation duty.²⁷ **We consider it inappropriate for the Secretary of State and the Welsh Ministers to exercise this novel power, which could potentially have far-reaching consequences, without first being required to consult interested parties.**

44. **We also consider a consultation duty to be even more important in view of the provision in clause 39(6) dispensing with the House’s hybrid instruments procedure—discussed below.**

Clause 39(6)—“Dehybridisation” of regulations under clause 24(1)

45. The hybrid procedure in the House of Lords would not apply to regulations made under clause 24(1). The memorandum explains:

“Regulations made under clause 24(1) could in theory be treated as a hybrid instrument for the purpose of standing order 216 of the House of Lords as they could provide for different provision to be made for particular areas of land, and acquiring authorities ...

If these Regulations were treated as hybrid, this would result in an extended Parliamentary procedure allowing for individuals to petition and for those petitions to be considered by the select committee formed specifically to consider the instrument. Given that any impact on a particular interest will only be for the purposes of limiting the temporary possession power to give a higher protection for private interests in land that are already affected by the Bill, the hybrid procedure is not necessary to protect those interests.

Due to these limits on the power to make Regulations, and the fact that the Regulations will be subject to the affirmative procedure, and the scrutiny which that entails, the Government considers that applying the hybrid procedure to such instruments is unnecessary.”²⁸

46. **In accordance with our usual practice, we draw this provision to the attention of the House. This is so that it can decide whether any safeguards are needed to protect the legitimate interests of persons who may be affected if the power were exercised in the way referred to in the memorandum. In our view, a consultation requirement should certainly be included.**

²⁷ This contrasts with the regulation-making power conferred by new section 100ZA(1) of the 1990 Act, inserted by clause 12, which is subject to a consultation duty (see subsection (3)).

²⁸ Paras 97 to 99.

Clause 38—Power to make consequential provision

47. Clause 38(1) confers a power on the Secretary of State by regulations “to make such provision as the Secretary of State considers appropriate in consequence of any provision of this [Bill]”.
48. This can be used to amend, repeal or revoke any “enactment”: see subsection (2).
49. The term “enactment” includes Acts of Parliament, Measures or Acts of the National Assembly for Wales, and all types of subordinate legislation, whether made by Ministers in the United Kingdom Government or Welsh Ministers (see subsection (3)).
50. The memorandum gives the following justification for this power:
- “There are a number of consequential changes being made by the Bill, particularly those flowing from the addition of a new procedure for modifying neighbourhood plans, restricting the imposition of planning conditions, and amendments to compulsory purchase legislation. It is possible that not all such consequential changes have been identified in the Bill. As such it is considered prudent for the Bill to contain a power to deal with these in secondary legislation.”²⁹
51. The negative procedure in the UK Parliament applies unless the power is used in a Henry VIII style to amend or repeal Acts of Parliament or Measures or Acts of the National Assembly for Wales, in which case the affirmative UK Parliamentary procedure applies. However the Bill makes no provision for any procedure in the Assembly when the power is used to amend primary or secondary legislation enacted by the Assembly or Welsh Ministers. Surprisingly, there is not even a duty to consult Welsh Ministers when amending Welsh legislation.
52. Clause 2 of the Wales Bill provides that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Assembly. As we observed in our recent reports on similar provisions in the Wales Bill³⁰ and the Digital Economy Bill³¹, it seems to be inconsistent with the spirit of that important principle for UK Ministers to have a power to amend Assembly legislation without at least being required to consult Welsh Ministers. The Constitution Committee have raised similar concerns.³²
53. **We consider that the power conferred by clause 38 of this Bill is inappropriate to the extent that it allows the Secretary of State to amend Assembly legislation without at least an obligation to consult Welsh Ministers.**
54. More generally, we observe that that the power has a very wide scope: it is to make whatever provisions—including ones amending and repealing Acts of Parliament—*the Secretary of State considers appropriate in consequence of the Bill*. We note that it has become standard practice for provisions of this type to be included near the end of a Bill.

29 Para 102.

30 Delegated Powers and Regulatory Reform Committee, (5th Report, Session 2016–17, [HL Paper 54](#)), paras 42 to 44.

31 Delegated Powers and Regulatory Reform Committee, (11th Report, Session 2016–17, [HL Paper 89](#)), paras 2 to 10.

32 Constitution Committee, (7th Report, Session 2016–17, [HL Paper 96](#)), paras 4 to 7.

55. **We are far from convinced that it is appropriate for Ministers to be given such loosely-drawn powers. We therefore invite the House to consider whether a power to make consequential provision should be restricted by some type of objective test of necessity, rather than leaving this to the subjective judgment of the Secretary of State.**

**COMMONWEALTH DEVELOPMENT CORPORATION BILL:
GOVERNMENT RESPONSE**

56. We considered this Bill in our 14th Report of this Session.³³ The Government have now responded by way of a letter from Rt Hon. Lord Bates, Minister of State at the Department for International Development, printed at Appendix 1.

³³ Delegated Powers and Regulatory Reform Committee, (14th Report, Session 2016–17, [HL Paper 97](#))

APPENDIX 1: COMMONWEALTH DEVELOPMENT CORPORATION BILL: GOVERNMENT RESPONSE

Letter from Rt Hon. Lord Bates, Minister of State at the Department for International Development, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

The Department for International Development is grateful to members of the Delegated Powers and Regulatory Reform Committee (the “Committee”) for their consideration of the Commonwealth Development Corporation Bill (the “Bill”). We regret that our initial memorandum did not sufficiently explain why we consider the relevant delegated power to be appropriate for this Bill and hope this letter of response provides you with the necessary information.

Increasing the limit on government assistance

Over the last 5 years, CDC has grown to meet demand for capital in target markets in Africa and South Asia leading to a step increase in the level of annual investment activity. The Bill aims to enable the Department to continue funding CDC over the medium term—over the two next strategy cycles. The Department has estimated demand for up to £4.5 billion of additional funding over the next 5 year strategy cycle from 2017 - 2021 to maintain this increase and has therefore proposed to raise the limit on financial assistance to £6 billion. Over the following strategy cycle, from 2021–2026, CDC capital needs are estimated to be up to £1.2bn a year, reaching £12 billion at the end of the cycle.

Reasons for taking a delegated power

Subject to the will of Parliament, the Department was faced with three options to achieve this policy. Our first option would have been to increase the limit on financial assistance to the CDC to £12 billion at the outset. However, as explained in our initial memorandum to the Committee, the Department does not wish to increase the limit beyond that which it considers necessary to meet the anticipated financial need over CDC’s next strategy cycle. The Department has estimated this to require an additional £4.5 billion funding and therefore decided to raise the limit by £6 billion only.

Our second option would have involved returning to Parliament for primary legislation as and when a further increase to the limit was needed. However, it is not the case that the Department anticipates a one-off increase of the financial limit to £12 billion by the end of 2021. The Department expects to continue to follow the approach of only increasing the financial limit to what it is needed at the time. It is not possible to say with certainty, at this stage, how much and how often such increases would be. Various factors will be at play, including external factors such as the outcome of future Spending Reviews or a change in market conditions. We therefore consider it more appropriate to use secondary legislation rather than primary legislation on each occasion the limit needs increasing.

The Department fully appreciates the concerns regarding the use of Henry VIII powers. However, we believe this is a very narrow and limited power which can only be used in one simple and foreseeable way: to increase the figure of the limit on government assistance to the CDC. It is also clear on the face of the Bill that such power is further restricted to a limit of £12 billion.

We have therefore concluded that the third and final option, which allows for any further increases to be made by statutory instrument, would strike the right balance: avoiding an increase of the financial limit to a sum higher than what is immediately necessary, whilst having a process at hand for future increases, subject to Parliamentary scrutiny, as and when needed. This is the flexibility element suggested in our initial memorandum to the Committee.

Statutory precedent

In our initial memorandum, we referred to the precedent delegated power under the Commonwealth Development Corporation Act 1978 (as amended) (the “1978 Act”). The 1978 Act has now been repealed by the Commonwealth Development Act 1999 (the “1999 Act”) which introduced the relevant provision on the limit on government assistance. We would like to clarify that the 1999 Act was passed with the purpose in mind of privatising the CDC. As the Committee is aware, the CDC has not been privatised and has since remained wholly owned by Government. However, the expectation at the time was that the Government would play a progressively smaller role in the corporation and therefore there was no intention to increase government financial assistance any further than the limit set in this Act.

CDC has since been restructured and reformed to become a leading development finance institution. It is with this expansion in mind that we want to provide a structure in the Bill to allow for further increases on the limit of financial assistance and it is in this context that the Department refers to the precedent model under the 1978 Act of providing for such further increases by statutory instrument.

22 January 2017

APPENDIX 2: MEMBERS AND DECLARATIONS OF INTERESTS

Committee 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.

For the business taken at the meeting on 25 January 2017 Members declared the following interests:

Lord Lisvane

Member of the Court of the Skinners' Company who are seeking planning permission for residential property.

Attendance

The meeting on the 25 January 2017 was attended by Baroness Drake, Lord Flight, Baroness Fookes, Lord Lisvane, Lord Thomas of Gresford and Lord Thurlow.