

HOUSE OF LORDS

Select Committee on the Constitution

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22nd Report of Session 2017–19

# Rivers Authorities and Land Drainage Bill

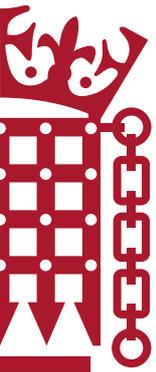
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### *Committee staff*

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# Rivers Authorities and Land Drainage Bill

## Introduction

1. The Rivers Authorities and Land Drainage Bill (“the Bill”) is a private member’s bill introduced in the House of Commons on 5 March 2018 by David Warburton, the MP for Somerton and Frome. It was passed on 15 March 2019, brought to the Lords on 18 March, and received its second reading on 16 May.
2. The Bill provides the Secretary of State with power to establish new public bodies known as “rivers authorities” and addresses an obstacle to raising the expenses of internal drainage boards under the Land Drainage Act 1991.
3. The Delegated Powers and Regulatory Reform Committee (DPRRC) reported on a number of issues in the Bill.<sup>1</sup> These included concerns about the breadth of the delegated powers in the Bill; the powers to establish public bodies with capacity to raise money and the limited democratic oversight to which they would be subject; the use of delegated powers to avoid a hybrid bill; and the lack of a parliamentary scrutiny mechanism for a “national framework” for rivers authorities. We unreservedly agree with the DPRRC’s criticisms of the Bill and the matters of constitutional concern it raised. We do not repeat them here. Instead, we confine ourselves to the particular, recurring issue of the creation of public bodies by delegated powers.

## Creation of public bodies

4. Clause 1 of the Bill, supplemented by schedule 1, amends the Flood and Water Management Act 2010 to give the Secretary of State power to establish new “rivers authorities”, by regulations, to manage flood risk in certain areas. The Bill provides for the main functions of such a rivers authority and provides for a range of powers, including those of entering into contracts and acquiring and disposing of property. Regulations may provide for the composition of a rivers authority and the remuneration of its members, as well as the proceedings of any rivers authority or its committees.
5. In our report *The Delegation of Powers* we concluded that the creation of public bodies using delegated powers was “constitutionally unacceptable”.<sup>2</sup> Rivers authorities will be significant bodies with the power to require the raising and spending of council tax monies. The Bill provides that rivers authorities will be “major precepting authorities”,<sup>3</sup> like county councils, for the purposes of their statutory functions. Such an authority will therefore be able to issue precepts requiring a council tax raising authority to collect the money from council tax payers for flood risk management work. The Bill does not provide for independent scrutiny of precepts issued by rivers authorities, as is the case with similar powers exercised by Police and Crime

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1 Delegated Powers and Regulatory Reform Committee, *Rivers Authorities and Land Drainage Bill* (54th Report, Session 2017–19, HL Paper 370)

2 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 50

3 Under the Local Government Finance Act 1992 as amended by schedule 2, para 12 to the Bill.

Commissioners, and there is no mechanism by which rivers authorities would be directly accountable to council tax payers.

6. The Delegated Powers and Regulatory Reform Committee observed that the powers in the Bill may have been designed to allow ministers to create a Somerset Rivers Authority without requiring a hybrid bill, as well as potentially establishing other rivers authorities in future. The DPRRC concluded that this was an inappropriate reason to seek delegated powers<sup>4</sup> and raised concern that the Bill was “an attempt, upon flimsy grounds, to set aside the procedures which Parliament has put in place to protect the interests of citizens who would be unfairly affected by legislation.”<sup>5</sup> **We agree with the Delegated Powers and Regulatory Reform Committee and reiterate our view that it is constitutionally inappropriate to establish public bodies through delegated powers—particularly if the purpose of doing so is to avoid the bill having to go through the hybrid bill procedure.** We may return to look at issues surrounding the procedure for hybrid bills at a later date.

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4 Delegated Powers and Regulatory Reform Committee, *Rivers Authorities and Land Drainage Bill* (54th Report, Session 2017–19, HL Paper 370), paras 13–14

5 *Ibid.*, para 71