

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

5th Report of Session 2023–24

**End of Session
2022–23 Report:
Democracy Denied?
Update**

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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.

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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. 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.

Fifth Report

END OF SESSION REPORT: *DEMOCRACY DENIED?* UPDATE

Introduction

1. In November 2021, the Delegated Powers and Regulatory Reform Committee (DPRRC) and the Secondary Legislation Scrutiny Committee (SLSC), in close collaboration, published thematic reports about the relationship between Parliament and the executive – entitled, respectively, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*¹ and *Government by Diktat: A call to return power to Parliament*.²
2. In *Democracy Denied?*, we said that we would reinstate the practice of publishing an end of session report, using the opportunity to raise general concerns about the delegation of powers in bills that had arisen during the session and to make comments about the quality of delegated powers memoranda (DPMs). As a result, in May 2022, we published an end of session report,³ to which the Government responded in July 2022.⁴ This is our end of session report for session 2022–23.

Focus of this report

3. Session 2022–23 was a lengthy and, in some respects, turbulent session, with several very large bills and several controversial ones. The focus of this report is threefold:
 - to give an account of the activity of the Committee during session 2022–23, including the response of the Government to our recommendations (Part 1),
 - to reflect on the bills in session 2022–23 and consider whether – or not – they demonstrate a commitment by departments to apply the principles and other recommendations set out in *Democracy Denied?* in the preparation and framing of primary legislation (Part 2), and
 - to provide feedback on their accompanying DPMs (Part 3).
4. In Appendix 1, we set out a minor revision to the Committee’s guidance for departments.

1 DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, (12th Report, Session 2021–22, HL Paper 106).

2 SLSC, *Government by Diktat: A call to return power to Parliament*, (20th Report, Session 2021–22, HL Paper 105).

3 DPRRC, *1st Report* (Session 2022–23, HL Paper 8).

4 Government response, DPRRC, *1st Report*: committees.parliament.uk/publications/31597/documents/177447/default/.

Some definitions

5. In this report, we refer to various terms which will be familiar to many but not to all. These include the following:
- **Henry VIII powers.** Delegated powers which enable a minister, by delegated legislation, to amend, repeal or otherwise alter the effect of an Act of Parliament.⁵
 - **Skeleton legislation.** Bills or clauses of bills which contain so many significant delegated powers that the real operation of the Act or provision would be entirely by the regulations made under it.⁶
 - **Tertiary legislation (and legislative sub-delegation).** Laws made by people who have had law-making power conferred on them not directly by Parliament but indirectly by ministers or public bodies. It is only allowed where an Act expressly allows ministers or public bodies to sub-delegate law-making powers to other people in this way.⁷
 - **De-hybridisation provision.** This is a provision in a bill which enables secondary legislation made under it, which would otherwise be hybrid because it would affect private interests, to proceed as if it were not. In the House of Lords,⁸ a piece of secondary legislation which is subject to the affirmative procedure⁹ and affects private interests is called a hybrid instrument, and a special procedure applies which enables those whose private interests are affected to petition against the instrument. The effect of a de-hybridisation provision is to disapply the hybrid instruments procedure where, save for the provision, it would apply.

Part 1: Committee activity during session 2022–23 and the response of the Government to our recommendations

6. This has been, for the most part, a busy session for the Committee. Some lengthy bills were considered, such as the Energy Bill (346 pages with 243 clauses and 19 Schedules), the National Security Bill (200 pages with 98 clauses and 13 Schedules), the Financial Services and Markets Bill (346 pages with 79 clauses and 14 Schedules), the Levelling-up and Regeneration Bill (408 pages with 223 clauses and 18 Schedules), the Economic Crime and Corporate Transparency Bill (326 pages with 192 clauses and 9 Schedules) and the Online Safety Bill (262 pages with 212 clauses and 17 Schedules).¹⁰ Other less lengthy but nonetheless notable bills included the Procurement Bill [HL], the Northern Ireland Protocol Bill, the Northern Ireland Troubles (Legacy and Reconciliation) Bill, the Public Order Bill, the Retained EU Law (Revocation and Reform) Bill, the Strikes (Minimum Service Levels) Bill and the Illegal Migration Bill. The total page count for the bills we considered during session 2022–23 was 3,080, with DPM pages (including supplementary DPMs) running to 2,628 pages.

5 See DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, *op cit.*, para 5.

6 *Ibid.*, para 60.

7 *Ibid.*, para 107.

8 There is no equivalent procedure in the House of Commons.

9 If an instrument is subject to the negative or no procedure, the hybrid instrument procedure does not apply.

10 Page numbers refer to the length of the Bill on introduction in the House of Lords.

7. We met 22 times and published 42 reports. We considered 83 bills, of which 38 were Government bills and 45 private members' bills. Of the 38 Government bills, we published substantive reports on the following 19 bills: the Schools Bill [HL], the Procurement Bill [HL], the Product Security and Telecommunications Infrastructure Bill, the Northern Ireland Troubles (Legacy and Reconciliation) Bill, the Northern Ireland Protocol Bill, the Seafarers' Wages Bill [HL], the Energy Bill [HL], the Energy Prices Bill, the Public Order Bill, the National Security Bill, the Genetic Technology (Precision Breeding) Bill, the Financial Services and Markets Bill,¹¹ the Levelling-up and Regeneration Bill, the Online Safety Bill, the Retained EU Law (Revocation and Reform) Bill, the Economic Crime and Transparency Bill, the Strikes (Minimum Service Levels) Bill, the Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill¹² and the Illegal Migration Bill.
8. We commented substantively on 50% of Government bills. If we discount the two bills on which we reported but made no recommendations (see footnotes 11 and 12), we made recommendations in respect of 17, or 45% of, Government bills, so made no substantive comment on 55% of them. In session 2021–22, the balance was the other way around in that we reported on 16 out of 29, or 55% of, Government bills. **Whilst we recognise that this is a blunt comparison since much depends on the character of the individual bills, we nonetheless welcome this difference.**
9. For completeness, we should add that we considered one Legislative Reform Order: the draft Legislative Reform (Provision of Information etc. Relating to Disabilities) Order 2022. We found that the Order met the tests set out in the Legislative and Regulatory Reform Act 2006 and agreed that the proposed affirmative procedure was appropriate.¹³

Government response rate to recommendations

10. In our end of session report for session 2021–22,¹⁴ we explained that several years ago, there was a prevailing assumption that the Committee's recommendations would be accepted by the government. We noted, however, that our subsequent analysis had revealed a different picture. With the caveat that an exact figure was difficult to achieve because, for example, acceptance may be partial, a reasonable approximation could be made and we estimated that during session 2021–22, the acceptance rate was in the region of 40% (higher than the approximate rate of 30% during session 2019–21).
11. We have reviewed the Government responses to our reports for session 2022–23. The caveat mentioned above, of course, remains the case. We also think that the description "acceptance rate" is not quite right. On occasion, our recommendations are accepted in full, sometimes they are accepted in

11 This was a large Bill with 346 pages and a DPM plus supplementary DPM of a total of 170 pages. Our report, however, raised only one point which was to alert the House to the presence of a de-hybridisation provision.

12 Exceptionally, we reported despite making no recommendation. We concluded: "We consider that ordinarily it would be inappropriate for the regulation making power conferred by section 3(9A) of the 2004 Act to be made subject to any procedure other than the affirmative resolution procedure. However, we take the view that the exceptional circumstances applying in Northern Ireland make the application of the negative resolution procedure not inappropriate during the period when there is no Assembly to carry out the approval function under the affirmative procedure". DPRRC, *26th Report* (Session 2022–23, HL Paper 154) para 4.

13 DPRRC, *3rd Report*, (Session 2022–23, HL Paper 15), paras 68–75.

14 See footnote 3.

part, and sometimes the Government respond by introducing amendments which are intended to meet our concerns to a greater or lesser extent. Given this, instead of “acceptance rate” we propose to use the term “positive response rate” which is intended to cover all responses, ranging from full acceptance down to relatively small changes. On that basis, **we have considered the Government responses in session 2022–23 and in our estimation the Government responded positively to over 50% of our recommendations.**¹⁵ **We welcome this indication of an upward trend in the positive response rate.** Notable high positive response rates related to the **Schools Bill [HL]** (Department for Education), the **Economic Crime and Transparency Bill** (Home Office), the **Illegal Immigration Bill** (Home Office), the **Online Safety Bill** (Department for Digital, Culture, Media and Sport (DCMS)), the **Levelling-up and Regeneration Bill** (Department for Levelling-up, Housing and Communities) and the **Product Security and Telecommunications Infrastructure Bill** (DCMS). Some large bills, the **Procurement Bill [HL]** (Cabinet Office) and the **Energy Bill [HL]** (Department for Business, Energy and Industrial Strategy (BEIS)), gave rise to a high number of recommendations of which we estimate 50% received a positive response in some form. We note but are not surprised that, given that we found the most significant provisions of the **Retained EU Law (Revocation and Reform) Bill** (BEIS) to be inappropriate, the positive response rate for that Bill was low. This was however in the context of the Government making a major change to the Bill by introducing a schedule of instruments to replace the sunset provision included in the original Bill. Overall, there were only four Government bills (leaving aside the Northern Ireland Protocol Bill) about which we made recommendations where the Government did not respond positively in any way.

Part 2: Assessment of bills in session 2022–23 against the principles and other recommendations set out in *Democracy Denied?*

12. The stridency of the titles of the two reports – *Democracy Denied?* and *Government by Diktat* – by the DPRRC and the SLSC was deliberate. Both reports had concluded that there was an urgent need for the balance of power between Parliament and the executive to be re-set. They said that the new order should be based on two fundamental principles:
 - first, that primary legislation, and the powers conferred by it, should be drafted on the basis of the principles of parliamentary democracy (namely parliamentary sovereignty, the rule of law and the accountability of the executive to Parliament); and
 - second, that the threshold between primary and delegated legislation should be founded on the principle that the principal aspects of policy should be on the face of a bill and only its detailed implementation left to delegation.
13. To support the embedding of these principles, we issued revised guidance for departments and recommended that the Cabinet Office *Guide to Making Legislation*¹⁶ should also be amended to reflect them.

¹⁵ This figure does not include the Northern Ireland Protocol Bill. See para 19.

¹⁶ Cabinet Office, *Guide to making legislation* (5 July 2013): https://assets.publishing.service.gov.uk/media/62fe365fe90e0703e1bb4844/2022-08_Guide_to_Making_Legislation_-_master_version_4_.pdf [accessed 18 December 2023]

14. In January 2022, the then Leader of the House of Commons, the Rt Hon. Jacob Rees-Mogg MP, responded to *Democracy Denied?*¹⁷
15. Soon after their publication, on 6 January 2022, the issues raised in the reports were debated on a motion in the name of Baroness Cavendish of Little Venice, and it became clear that the reports had struck a chord across the House and beyond.¹⁸ Earlier this year, on 12 January 2023, the former Chairmen of the committees, Lord Blencathra (DPRRC) and Lord Hodgson of Astley Abbots (SLSC), to whom we pay tribute for their work in this area, led a debate on the reports.¹⁹ Again, the concern amongst members of the House was clear.

Bills in 2022–23 assessed against Democracy Denied?

16. In terms of clear evidence of the assimilation by departments of the principles of *Democracy Denied?*, the session did not begin well. The first Bill which came before us was the **Schools Bill [HL]** which had been introduced in the House of Lords in May 2022 (but did not progress beyond report stage in the Lords). It contained provision about academies, school funding, school attendance and independent educational institutions. In our reports on bills, our usual approach is to identify specific powers which we wish to draw to the attention of the House. On this occasion, exceptionally, we began our report with a general comment. Our disappointment was unequivocal:²⁰

“This is the first bill of the new session that has come before us. Following the publication of our report, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, in November 2021, and of revised guidance to departments, we expected that bills introduced in the current session would reflect the principles set out in our report and revised guidance. ... The powers to which we draw attention in this report on the Schools Bill demonstrate that no heed has been taken by the Government of the concerns expressed by this Committee in *Democracy Denied?*, by the Secondary Legislation Scrutiny Committee in its report, *Government by Diktat: A call to return power to Parliament*, and expressed by members during debates in the House and by others outside of Parliament.”

17. As a result, we took the exceptional step of writing to the then Secretary of State for Education, the Rt Hon. Nadhim Zahawi MP, drawing attention to *Democracy Denied?* and expressing deep disappointment that our report on the Bill was critical of excessively wide powers in the Bill for which the justification provided was, we said, predictable and formulaic. The Government accepted our recommendations.²¹
18. In June 2022, we reported on the **Procurement Bill [HL]**, the purpose of which was to reform the UK public procurement regime following Brexit. We again expressed disappointment, referring in particular to the failure of the DPM to explain and justify some very broad delegations of power. We said: “This would give us cause for concern at any time but is

17 Government response, DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report): committees.parliament.uk/publications/8672/documents/88067/default/

18 HL Deb, 6 January 2022, [cols 759–794](#).

19 HL Deb, 12 January 2023, [cols 1532–1590](#).

20 DPRRC, *2nd Report* (Session 2022–23, HL Paper 9), para 2.

21 DPRRC, *8th report* (Session 2022–23, HL Paper 45), Appendix 1.

particularly disappointing as it comes so soon after the publication of our report, *Democracy Denied?* ... and of revised guidance for departments on the role and requirements of this Committee”.²² We were also critical of the approach throughout the Bill of leaving important policy issues entirely to regulations, in breach of our second principle (see paragraph 12 above) “that the threshold between primary and delegated legislation should be founded on the principle that the principal aspects of policy should be on the face of a bill and only its detailed implementation left to delegation”. The Government responded positively to about half of our recommendations.²³

19. The **Northern Ireland Protocol Bill** was introduced in the House of Commons on 13 June 2022 (but did not progress beyond committee stage in the House of Lords after an announcement by the Government on 23 February 2023 that the Bill would not proceed further).²⁴ Given its exceptional constitutional significance, contrary to our usual practice,²⁵ we reported on the Bill whilst it was still in committee in the Commons. In our report, we again compared the Bill unfavourably against the principles set out in *Democracy Denied?*:²⁶

“According to the Memorandum, the purpose of this Bill is “to provide Ministers with the power to make changes to the operation of the Northern Ireland Protocol in domestic law which protect the Belfast (Good Friday) Agreement and to safeguard peace and stability in Northern Ireland”. The Protocol is, however, the most contentious component of the EU withdrawal agreement and the legislative mechanism by which the Government propose to give effect to the Bill’s purpose is wholly contrary to the principles of parliamentary democracy ... which lie at the heart of our recent report *Democracy Denied?*”

The report identified, in particular, the skeletal nature of the Bill:

“The Northern Ireland Protocol Bill is a skeleton bill that confers on Ministers a licence to legislate in the widest possible terms. The Bill unilaterally departs from the Northern Ireland Protocol and enables Ministers to depart from the Protocol even further. The Bill represents as stark a transfer of power from Parliament to the Executive as we have seen throughout the Brexit process. The Bill is unprecedented in its cavalier treatment of Parliament, the EU and the Government’s international obligations.”

We also drew attention to the wide-ranging nature of the Henry VIII powers in the Bill:

“Ordinary Henry VIII powers allow Ministers to amend Acts of Parliament. In some contexts Henry VIII powers allow Ministers to make minor and consequential amendments to a narrow and technical area of law. That is not the case here. Every power in the Bill allows

22 DPRRC, *3rd Report* (Session 2022–23, HL Paper 15), para 7.

23 DPRRC, *21st Report* (Session 2022–23, HL Paper 122), Appendix 1.

24 HM Government, *Political Declaration by the European Commission and the Government of the United Kingdom*, (27 February 2023): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139420/Political_Declaration_by_the_European_Commission_and_the_Government_of_the_United_Kingdom.pdf.

25 The Committee usually reports on bills after introduction in the House of Lords and before committee stage.

26 DPRRC, *7th Report* (Session 2022–23, HL Paper 40), paras 3, 4 and 7.

Ministers to make any provision that could be made by an Act of Parliament, including modifying by regulations the Bill once it has been enacted.”

20. The **Energy Bill [HL]** was so lengthy that we published our report in three parts.²⁷ Several issues identified in *Democracy Denied?* were raised in our third report on Parts 7 to 13 of the Bill. For example, we drew attention to the fact that the bill contained skeleton provision and reiterated our view expressed in *Democracy Denied?* that “... skeleton legislation signifies an exceptional shift in power from Parliament to the executive Accordingly, skeleton legislation should only be used in the most exceptional circumstances.” We concluded in the case, for example, of clause 168 (Power to make provision for the regulation of heat networks etc.), the Government had failed to provide the necessary justification for the skeletal nature of the provision.²⁸
21. One of the most significant findings of *Democracy Denied?*—we described it as “perhaps the most striking and disturbing recent development” – was a greater prevalence of what we termed “disguised legislation” where legislative powers are conferred on ministers, not by regulation-making powers subject to parliamentary scrutiny, but, by using devices such guidance, determinations, protocols, directions and codes of practice which are often not subject to parliamentary scrutiny.²⁹ We said that “... the multiplicity of disguised legislative instruments is confusing to Parliament and to the public, and does not, in our view, promote the good law principles of law that is clear and accessible” and that, in the absence of convincing reasons to the contrary, they should not be used.³⁰
22. We drew attention to the use of disguised legislation in the **Energy Bill [HL]**. For example, clause 178 (Zoning methodology) enabled the Heat Network Zones Authority (HNZA) to publish certain documents, and regulations made under clause 178(4) could require zone coordinators, as well as the HNZA itself, to comply with requirements set out in such documents. We concluded that a power which would allow requirements relating to the zoning methodology to be set out in non-statutory documents was inappropriate. Later in our report, we were critical of a power which would enable the Secretary of State to give directions in relation to core fuel sector activities which would not be subject to parliamentary scrutiny or even be required to be published. The Government responded positively to about half of our recommendations.³¹
23. The **Seafarers’ Wages Bill [HL]** was introduced in the House of Lords in July 2022. In comparison with some other bills considered during the session, it was a short bill with a narrow focus. Its purpose related to the payment of the national minimum wage to seafarers working on ships that regularly used UK ports. Our report on this Bill, as with the Energy Bill, was critical of a power conferred on the Secretary of State to give directions, a power which could be used, amongst other things, to require a harbour authority

27 DPRRC, *8th Report* (Session 2022–23, HL Paper 45), *10th Report* (Session 2022–23, HL Paper 65) and *11th Report* (Session 2022–23, HL Paper 66), paras 11 and 15.

28 DPRRC, *11th Report*, paras 11 and 15.

29 DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, *op cit.*, para 102.

30 DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, *op cit.*, paras 104 and 105.

31 DPRRC, *27th Report* (Session 2022–23, HL Paper 159), Appendix 1.

not to exercise powers conferred by the Bill. We described the power to give directions as “startling” because it could be exercised generally (not just in individual cases), it allowed the Secretary of State, in effect, to modify the Bill by direction, it was a completely open-ended power, and its exercise was not subject to any form of parliamentary scrutiny.³² The Government did not accept this recommendation but responded positively to the other two recommendations we made.³³

24. The issue came up yet again in relation to the **Energy Prices Bill**, a fast-tracked Bill, introduced in the House of Commons on 12 October 2022 and, following second reading in the House of Lords on 19 October, went through all Lords remaining stages on 24 October. Clause 22 conferred a power on the Secretary of State to give directions to a person holding an energy licence or the Northern Ireland Regulator. We said that the power constituted “delegation of a wide legislative power” since, amongst other things, there were no limits on the kinds of requirements which could be imposed through the directions power and it was, in effect, a Henry VIII power because it allowed the effect of legislation, including primary legislation, to be modified by direction.³⁴ We concluded that the power in clause 22 was inappropriate and said that it was an example of the Government appearing “to have completely ignored” a recommendation in *Democracy Denied?* to the effect that such legislative devices should not be used unless there were convincing reasons for doing so (which, in our view, on this occasion there were not).³⁵
25. The **Energy Prices Bill** also fell foul of recommendations in *Democracy Denied?* in relation to provision allowing for legislative sub-delegation of power, whereby a Bill confers a power on a minister to make regulations which may in turn confer power to make subordinate (also known as tertiary) legislation (in this case, to give directions). We had said that where a government seeks a legislative sub-delegation of power, the power should be limited and specific, and should be subject to parliamentary scrutiny; and the DPM should provide a compelling justification for the power. Since none of these conditions had been met in relation to the Bill, we concluded that the inclusion of the legislative sub-delegation of power in paragraph 3(2) of Schedule 1 to the Bill similarly indicated that the Government appeared to have completely ignored our recommendations.³⁶ The Government did not accept our recommendations about the Bill.³⁷
26. In December 2022, we published a report on the **Genetic Technology (Precision Breeding) Bill**, the purpose of which was to reduce regulatory burdens and financial barriers for researchers and commercial breeders using precision breeding technologies.³⁸ Amongst other things, we drew attention to Part 3 of the Bill which provided for the regulation of food and feed produced from “precision bred organisms”. We described the Part as consisting of skeleton clauses which afforded ministers considerable discretion. Our guidance to departments states that skeleton legislation should only be used in the most exceptional circumstances and that, where it is used, the

32 DPRRC, *10th Report* (Session 2022–23, HL Paper 65), paras 13 to 22.

33 DPRRC, *16th Report* (Session 2022–23, HL Paper 84), Appendix 1.

34 DPRRC, *14th Report* (Session 2022–23, HL Paper 76), para 14.

35 *Ibid.*, para 17.

36 *Ibid.*, para 10. We made the same point in relation to paragraph 3(2) of Schedule 2 to the Bill which made similar provision in relation to Northern Ireland.

37 DPRRC, *15th Report* (Session 2022–23, HL Paper 80), Appendix 1.

38 DPRRC, *19th Report* (Session 2022–23, HL Paper 109), para 2.

DPM should provide a full justification. On this occasion, we found the justification unconvincing and, therefore, the powers inappropriate.³⁹ The Government largely rejected our recommendations although agreed that the parliamentary procedure for some powers should be upgraded from the negative to the affirmative procedure.⁴⁰

27. At the start of 2023, we considered the largest bill of the session, the **Levelling-up and Regeneration Bill** which was introduced in the House of Lords on 19 December 2022. It dealt with a wide range of topics: planning, combined county authorities, an Infrastructure Levy, community land auction pilots, environmental outcomes reports, nutrient pollution standards, development corporations, compulsory purchase, letting by local authorities of vacant high-street premises and information about interests and dealings in land. At 375 pages, the DPM accompanying the Bill was exceptionally lengthy and our report of 91 paragraphs reflected that. On five occasions in our report we recommended that powers should be removed from the Bill, in some cases on the express ground that the policy at issue was too significant a matter to be left to regulations and should instead be provided for on the face of the Bill and in others that the power was too broad and open-ended.⁴¹
28. The Bill also included what we regarded as disguised legislation. We drew attention to clause 128 (Power to permit community land auction arrangements) in Part 5 of the Bill because it gave the Secretary of State power to choose those local planning authorities (LPAs) which were to be included in the community land auction arrangement pilot. We said: “In our view, this constitutes the delegation of a legislative power because its effect is to determine which LPAs are able to exercise the powers conferred by Part 5”, and we noted that “[t]he power of direction is not however subject to any parliamentary scrutiny”.⁴² We were unconvinced by the Government’s justification and recommended that the power to designate should be included in regulations contained in a statutory instrument and subject to the negative procedure.
29. We were critical of Part 6 of the Bill, which was intended to replace the EU processes of environmental impact assessment with a new framework for assessing proposals using environmental outcome reports, on the ground that it constituted skeleton legislation “with the result that all the key elements of the new environmental impact assessment regime are to be set out in subordinate legislation”.⁴³ We rejected, in particular, the Government’s argument that since the existing environmental assessment framework which was being replaced was for the most part contained in subordinate legislation (namely, regulations under section 2(2) of the European Communities Act 1972), there was nothing new in these matters being the subject of delegated powers and that it would be odd if going forward the only ability to amend provision previously made by regulations was by way of primary legislation. We repeated our view (which we had most recently stated in respect of the Energy Bill) that:⁴⁴

39 *Ibid.*, para 38.

40 DPRRC, *24th Report* (Session 2022–23, HL Paper 142), Appendix 1.

41 *Ibid.* paras 31, 38, 47, 57 and 62.

42 *Ibid.*, para 64.

43 *Ibid.*, para 71.

44 *Ibid.*, paras 72 and 73.

“... the fact that provisions governing a subject area are currently contained in regulations made under section 2(2) of the ECA does not by itself make it appropriate to use a regulation-making power to amend and extend the provisions in that subject area. Instead, the proposal to confer regulation-making powers needs to be justified on its own merits, particularly where, as in these cases, they are framework powers which are therefore capable of providing a very broad scope of regulation making powers to the Secretary of State.”

30. We concluded that “[i]n enacting Part 6, Parliament will have set no policy framework for assessing the environmental impact of proposals over as wide a range of activities as it is possible to imagine. This would enable successive Ministers to implement regimes of greatly different character and effect without the need for further primary legislation” and that, therefore, the powers conferred by Part 6 were inappropriate.⁴⁵ Whilst not accepting all our recommendations, the Government responded positively to our report on several points.⁴⁶
31. Later in the session, in September 2023, we reported on Government amendments to the **Levelling-up and Regeneration Bill** tabled during report stage. We drew attention to a new clause which gave the Secretary of State “a Henry VIII power to make such provision by regulations as the Secretary of State considers “appropriate” about the operation of any relevant enactment in connection with the effect of nutrients in water that could affect a habitats site connected to a nutrient affected catchment area”.⁴⁷ We recommended that the apparently broad and open-ended Henry VIII power should be removed from the Bill. We made a similar recommendation in relation to a power enabling the Secretary of State to exceed the maximum permissible nitrogen and phosphorus concentration specified in primary legislation, noting that the exercise of that power was not subject to any parliamentary oversight.⁴⁸
32. In February 2023, we published a report on what was one of the most, if not the most, controversial bills of the session, the **Retained EU Law (Revocation and Reform) Bill** (“the REUL Bill”). The REUL Bill was brought from the House of Commons on 19 January 2023. Its main purpose was, according to the DPM, to “remove the precedence given to retained EU law (“REUL”) in the UK statute book and to firmly re-establish our Parliament as the principal source of law in the UK, restoring the primacy of Acts of Parliament in UK statute”.⁴⁹ We said that it was regrettable that such a bill had been introduced so soon after the debate on *Democracy Denied?* and *Government by Diktat* on 12 January in which it was made clear that members across the House shared the concerns expressed in the two reports. We described the Bill as “hyper-skeletal”, that it would provide “a mechanism that gives Ministers the power to decide what becomes of whole swathes of UK law deriving from our membership of the EU” and we said: “We criticise wide regulation-making powers in Bills covering just one policy area. Here we have very wide powers to make provision across multiple policy areas. If we were considering an open-ended delegated power in, say, an Employment Bill allowing Ministers to re-write the law on working time,

45 *Ibid.*, para 76.

46 DPRRC, *41st Report* (Session 2022–23, HL Paper 248), Appendix 1.

47 *Ibid.*, para 14.

48 *Ibid.*, para 18.

49 DPRRC, *25th Report* (Session 2022–23, HL Paper 147), para 2.

we would express concern. This Bill is tantamount to creating scores of such powers”.⁵⁰ Exceptionally,⁵¹ we began our report with a general commentary on the Bill in which we raised a number of concerns including concerns about Parliament being bypassed, the level of parliamentary scrutiny to be applied to the exercise of powers under the Bill, the risk of uncertainty and the lack of justification for the powers. We recommended that powers in clauses 1, 10, 12, 13, 15 – five of the six most important provisions in the Bill – should be removed from the Bill. We identified clause 15 (powers to revoke or replace secondary [Retained EU Law]) as “the most arresting clause” because of its “width, novelty and uncertainty”, giving ministers “an extraordinarily wide discretion in relation to thousands of pieces of secondary REUL”.⁵² The Government did not accept our recommendations but made a major change to the Bill (see paragraph 11 above for the wider context).⁵³

33. We considered the **Strikes (Minimum Service Levels) Bill**, which was introduced in the House of Lords on 31 January 2023, in early March. The purpose of the Bill was to make provision about minimum service levels in connection with trade unions strike action in certain services. We were critical of two delegated powers in the Schedule to the Bill. We said of a new section to be added to the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), enabling the Secretary of State to make provision by regulations for levels of service during strikes in relevant services: “This is a Bill that deals with minimum service levels during strikes. Yet there is nothing in the Bill saying what those minimum service levels are. We shall only know when Ministers make regulations after the Bill is enacted. This is small comfort to Parliament, which is considering the matter right now”.⁵⁴ We were also critical of the failure of the Bill to state which services were covered by the Bill. We said that the services covered by the Bill were “as fundamental as the minimum levels of that service” and that, as with the new section in the 1992 Act, in the absence of a satisfactory explanation by the Minister, the power was inappropriate. The Government did not accept our recommendations.
34. In March 2023, we considered the **Online Safety Bill**. This was another lengthy Bill with a similarly lengthy DPM of 117 pages. Its purpose was to establish a new regulatory regime to address illegal and harmful content online. We made a number of recommendations. We were critical, for example, of clause 39 which gave the Secretary of State power to direct OFCOM to modify a draft code of practice. This was significant because the codes would play an important part in the regulatory regime, and we were particularly troubled by the provision that the Secretary of State could direct a modification “for reasons of public policy”. The Government had already made a commitment to change clause 39 but, pending those changes, we recommended that clause 39 should be removed from the Bill. In response, the Government introduced amendments intended to meet our concerns. The response also stated: “We will also go further to increase the transparency of the power by requiring the Secretary of State to publish the exchange of letters with OFCOM in the event that the power of direction is used except where doing so would be against the interests of national

50 *Ibid.*, paras 9 and 10.

51 See also para 16 above in relation to the Schools Bill [HL].

52 *Ibid.*, paras 47 and 48.

53 DPRRC, *33rd Report* (Session 2022–23, HL Paper 195), Appendix 1.

54 DPRRC, *27th Report* (Session 2022–23, HL Paper 159), para 15.

security or against the interests of relations with the government of a country or territory outside the United Kingdom”.⁵⁵

35. We also drew attention to an instance of disguised legislation in clause 77 under which the Secretary could set the “threshold figure” of “qualifying worldwide revenue” (that determined which providers of regulated services could be required to pay an annual fee to fund the regulatory regime) by simply publishing a statement. We said that we were “... concerned that this appears to be another example of what we refer to in the *Democracy Denied?* report as a power to make “disguised legislation”. It is in substance a legislative power to supplement primary legislation yet it is exercised not by legislation but by mere “statement” and without any parliamentary scrutiny”.⁵⁶ The Government accepted our concerns and in response to our report said that they would introduce amendments which would “... ensure that qualifying worldwide revenue and the threshold decisions will be made via affirmative and negative regulations respectively. In doing this, we aim to increase the level of parliamentary scrutiny available in both definitions”.⁵⁷
36. We reported on the **Online Safety Bill** in August 2023 on amendments made during report stage which included a delegated power to allow for the regulation of app stores. We noted that the new power was a significant Henry VIII power since it allowed the Secretary of State by regulations to amend any part of the Bill to make provision for or in connection with the regulation of app stores. We also drew attention to the fact that the new provision about the regulation of app stores, contained in clauses 216 and 217, constituted skeleton legislation and so contravened the principle in *Democracy Denied?* that the principal aspects of policy should be on the face of a bill.⁵⁸ We concluded that it would have been “... far preferable for the regulation of app stores to be dealt with in future primary legislation, rather than being left to subordinate legislation”.⁵⁹
37. In our end of session report for session 2021–22, we said of session 2022–23, the session covered by this report:

“We are now at the start of a new session [2022–23]. The Government have announced a large programme of bills, some of them likely to be controversial. Unlike the departmental bill teams supporting the bills that came to the Lords during the end of the last session, the bill teams and drafters supporting these forthcoming bills will have had an opportunity to assimilate the new DPRRC guidance to departments, published with *Democracy Denied?* and to take on board the concerns raised in the two committees’ thematic reports. We expect the bills introduced in this current session to reflect the principles set out in the Committee’s revised guidance to departments. We therefore hope that we will be able to report in our end of term report a marked improvement in the balance between primary and delegated legislation. Such an improvement would signify a significant step towards re-setting the balance of power between Parliament and the executive.”

55 DPRRC, [38th Report](#) (Session 2022–23, HL Paper 227), Appendix 1.

56 DPRRC, [28th Report](#) (Session 2022–23, HL Paper 160), para 29.

57 DPRRC, [38th Report](#), Appendix 1.

58 DPRRC, [40th Report](#) (Session 2022–23, HL Paper 242), para 5.

59 *Ibid.*, para 7.

38. **Regrettably, we are unable to report the marked improvement that we had hoped for.** Almost all major Government bills this session have been found wanting when assessed against the standards set by *Democracy Denied?*, whether because they are skeleton bills or include skeleton provision, or because they include broad, open-ended delegations of legislative powers, sometimes Henry VIII powers, to make secondary legislation the substance of which, we say, should have been on the face of the bill, or because provision is made for legislative powers to be exercised using disguised legislative devices.

Part 3: DPMs during session 2022–23

Feedback

39. Departments are required to provide a delegated powers memorandum (DPM) with every government bill, and a supplementary DPM for government amendments which introduce new delegated powers. On occasion, a DPM will be provided with a private member’s bill which has the support of the government. Their principal purpose is for the government to explain and justify the delegated powers in a bill, including the level of scrutiny applied to them.
40. The DPM is an influential document. It gives a department the opportunity to tell the Committee and the Houses why Parliament should agree to confer the powers being sought by ministers. The Government place significant weight on the DPM as a defence to our criticisms of bills. In response to *Democracy Denied?*, the Government defended their use of disguised legislation by saying that such delegations of power are justified and explained in the DPM. The same point was made in response to our criticisms of skeleton legislation where the response says that it is for the government to make their case for the delegated powers contained in a bill – a case set out in the DPM – and it is then for Parliament “to debate, and either agree, disagree or amend the delegated powers”.⁶⁰
41. The DPM is undoubtedly important. If drafted comprehensively and well, it may meet a point which we might otherwise have raised in a report. We also believe that the preparation of a DPM may have an internal disciplinary effect within departments (that is, of course, if the DPM is drafted alongside the bill – not if it is simply tacked on at the end of the bill preparation process); and we have been told that the knowledge that the DPM will be scrutinised by the Parliamentary Business and Legislation (PBL) Committee, chaired by the Leader of the House of Commons, will also have that internal disciplinary effect.⁶¹ In their response to *Democracy Denied?*, the Government told us that the PBL Committee was, amongst other things, focused on scrutinising the quality of supporting documentation to ensure that the Government were “properly supporting Parliament in its scrutiny function”.⁶²

60 Government response, DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report), pp 4, 5 and 9: committees.parliament.uk/publications/8672/documents/88067/default/.

61 See reference to the evidence of Richard Heaton, then First Parliamentary Counsel and Permanent Secretary at the Cabinet Office, in our Special Report, *Quality of Delegated Powers Memoranda*, (7th Report, Session 2014–15, HL Paper 39), para 5.

62 Government response, DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report), p 4: committees.parliament.uk/publications/8672/documents/88067/default/. See footnote 3 above.

42. We agree that the requirement for a DPM provides – in some measure – a safeguard to Parliament in that it is intended to ensure that Parliament is fully informed of the powers being sought.⁶³ But the effectiveness of that safeguard is dependent on the quality of DPMs, and whether they are complete, comprehensive and accurate.
43. Our assessment of DPMs in session 2021–22 was mixed. We were able to comment positively on the DPMs for three bills (Environment Bill (Department for Environment, Food and Rural Affairs (Defra)), Nuclear Energy Financing Bill (BEIS) and the Building Safety Bill (DLUHC)) but made critical comments on the DPMs for five (Professional Qualifications Bill (BEIS), Professional Qualifications Bill (Government amendments) (BEIS), Police Crime, Sentencing and Courts Bill (Government amendments) (Home Office), Nationality and Borders Bill (Home Office), Judicial Review and Courts Bill (Ministry of Justice (MoJ)) and Approved Premises (Substance Testing) Bill (a private member’s bill with the support of the MoJ)).
44. In session 2022–23, the imbalance was greater. We commented positively on the DPM for one bill but negatively on the DPMs for 13 bills. The DPM about which we made a positive comment is set out in Table 1 below.

Table 1: positive comments

Bill	Department	Comment (and report number)
Financial Services and Markets Bill	HM Treasury	“We commend the Treasury for providing us with a thorough and helpful delegated powers memorandum.” ⁶⁴

45. In response to *Democracy Denied?* the Government said that the Office of the Leader of the House of Commons would welcome specific examples of DPMs which we felt had failed to meet the standard required. These are listed in Table 2 below.

Table 2: negative comments

Bill	Department	Comment (and report number)
Procurement Bill [HL]	Cabinet Office	“This report identifies multiple failures in the Memorandum to adequately explain and justify very broad delegations of power which enable implementation of significant policy change by delegated legislation.” (3rd Report) ⁶⁵

63 Although, in *Democracy Denied?*, para 26 and footnotes 4 and 22, we acknowledge the realpolitik that “[a] government which commands a majority in the House of Commons can resist attempts to restrict the scope of a power”. We quote Sir Jonathan Jones KCB KC(Hon), former Government Legal Department Permanent Secretary and Treasury Solicitor, who said “... of course a government with a big majority can generally get Parliament to confer the powers it wants”.

64 DPRRC, *23rd Report* (Session 2022–23, HL Paper 134), para 1.

65 DPRRC, *3rd Report* (Session 2022–23, HL Paper 15), para 7.

Bill	Department	Comment (and report number)
Product Security and Telecommunications Infrastructure Bill	DCMS	“Some of the points we make arise from a difference between what is said in the memorandum and what appears on the face of the Bill.” (4th Report) ⁶⁶
Northern Ireland Protocol Bill	Foreign Commonwealth and Development Office (FCDO)	“Given the exceptional significance of this Bill, it is especially disappointing that the Memorandum falls short of the standards Parliament is entitled to expect and which we set out in our recently revised Guidance to Departments.” (7th Report) ⁶⁷
Northern Ireland Troubles (Legacy and Reconciliation) Bill	Northern Ireland Office	“We have been provided with a delegated powers memorandum ... from the Northern Ireland Office. Some of its explanations are very brief, even inscrutable.” (9th Report) ⁶⁸
Energy Bill	BEIS	Specific criticisms were made. These included: “In justifying the powers [in clause 165], the memorandum refers only to the power to amend the definition of a heat network. The explanation refers to the potential need to extend the meaning of heat network to capture new technologies. The other definitions address different matters, and therefore the justification in the memorandum offers no explanation as to why it is necessary to have the power to amend the other definitions. Given the lack of any explanation in the memorandum, we consider that extending the amendment power to the other definitions is inappropriate unless the Minister is able to provide the House with a convincing justification for doing so.” The Committee’s report also identified a discrepancy between the Bill and the DPM. (11th Report) ⁶⁹

66 DPRRC, *4th Report* (Session 2022–23, HL Paper 23), para 2.

67 DPRRC, *7th Report* (Session 2022–23, HL Paper 40), para 2.

68 DPRRC, *9th Report* (Session 2022–23, HL Paper 55), para 2.

69 DPRRC, *11th Report* (Session 2022–23, HL Paper 66), para 5 and footnote 10. See also paras 27 and 74.

Bill	Department	Comment (and report number)
Energy Prices Bill	BEIS	<p>“The power [in clause 22] is explained at paragraphs 154 to 162 of the Memorandum. However, the Memorandum does not explain the full range of the things which can be done in exercise of the power.”</p> <p>“Accordingly, we are firmly of the view that the power conferred by clause 22 is inappropriate. A full explanation of the power—in particular of the potential for it to be exercised in a way which would override legislation—is not provided in the Memorandum.” (14th Report)⁷⁰</p>
Public Order Bill	Home Office	Criticism of the Government’s selection of examples. (17th Report) ⁷¹
Genetic Technology (Precision Breeding) Bill	Defra	<p>“We wish to express disappointment and concern that this report highlights repeated failures in the Memorandum to provide adequate justification for powers that the Bill confers. For each of the nine powers discussed below, the Memorandum provides only cursory justification, with the lengthiest example barely exceeding six lines of text.” (19th Report)⁷²</p>
National Security Bill	Home Office	<p>“The Home Office ... provided a delegated powers memorandum ... for the Committee. The first version of the memorandum sent to us was, however, deficient and, as a result, a revised version was provided.” (20th Report)⁷³</p>
Retained EU Law (Revocation and Reform) Bill	Cabinet Office	<p>“The Government have failed to provide the exceptional justification that exceptional powers demand. Neither the Explanatory Notes nor the Memorandum acknowledges the importance of the powers conferred by the Bill.” (25th Report)⁷⁴</p>

70 DPRRC, [14th Report](#) (Session 2022–23, HL Paper 76), paras 15 and 18.

71 DPRRC, [17th Report](#) (Session 2022–23, HL Paper 91), paras 19 to 21.

72 DPRRC, [19th Report](#) (Session 2022–23, HL Paper 109), para 6.

73 DPRRC, [20th Report](#) (Session 2022–23, HL Paper 113), para 2.

74 DPRRC, [25th Report](#) (Session 2022–23, HL Paper 147), paras 18 to 21.

Bill	Department	Comment (and report number)
Strikes (Minimum Service Levels) Bill	BEIS	“Paragraph 14 of the Memorandum offers a mere nine lines of justification for a power that imposes a significant legal restriction on the right to strike.” (27th Report) ⁷⁵
Online Safety Bill	DCMS	Commenting on clause 39 (power of the Secretary of State to direct OFCOM to modify draft codes of practice): “ ... the Memorandum doesn’t provide a convincing explanation: it proceeds by way of assertion rather than explanation. It states that the power is “essential” but it fails to explain why.” (28th Report) ⁷⁶
Levelling-up and Regeneration Bill: Government amendments	DLUHC	With regard to a new clause (power to replace the HSE as building safety regulator): “We consider that the Supplementary Memorandum provides wholly inadequate justification for giving the Secretary of State such a broad Henry VIII power ...”. (31st Report) ⁷⁷
Supported Housing (Regulatory Oversight) Bill	Private member’s Bill supported by the Government (DLUHC)	Effect of a provision in the Bill (clause 4(3)) incorrectly described in the DPM. (32nd Report) ⁷⁸

75 DPRRC, [27th Report](#) (Session 2022–23, HL Paper 159), para 16.

76 DPRRC, [28th Report](#) (Session 2022–23, HL Paper 160), para 13.

77 DPRRC, [31st Report](#) (Session 2022–23, HL Paper 181), para 12.

78 DPRRC, [32nd Report](#) (Session 2022–23, HL Paper 182), para 10.

Bill	Department	Comment (and report number)
Levelling-up and Regeneration Bill: Government amendments	DLUHC	With regard to a new clause (power of Secretary of State to make regulations in connection with the effect of nutrients in water that could affect a habitats site): “The paucity of explanation provided in the Supplementary Memorandum is of particular concern given that the power is part of a package of measures that may prove highly controversial in policy terms ...”. Later in the report: “ ... the Supplementary Memorandum fails to fully explain or to justify giving the Secretary of State broad and open-ended powers to allow the maximum permissible nitrogen and phosphorus concentration levels specified in primary legislation (in new section 96F of the Water Industry Act 1991) to be exceeded - and to do so without any Parliamentary oversight whatsoever”. (41st Report) ⁷⁹

46. The frequency with which we have commented adversely about a DPM is disappointing; and, as Table 2 shows, the poor standard is not confined to one or two departments but ranges across departments. **Failure to provide DPMs which are complete, comprehensive and accurate is a serious matter not only because it means that Parliament is not being appropriately supported in its scrutiny function but also because, more fundamentally, it casts doubt on the quality of decision-making underpinning the inclusion of delegated powers in a bill.** If departments fail to provide compelling justification in a DPM, this raises the question whether this was simply a lapse on the part of those preparing the DPM or whether no such justification could be provided. If the latter is the case, then the claim that the PBL Committee focuses not only on the readiness of legislation but also on the “quality of supporting documentation” is also brought into question.

Next steps

47. Our conclusions about session 2022–23 are mixed. On the one hand, we have made recommendations in relation to a smaller proportion of Government bills than in the previous session and our estimate is that a higher number of our recommendations have received a positive response. These are welcome developments. On the other hand, our findings in relation both to the adherence of the 2022–23 bills to the principles and recommendations in *Democracy Denied?* and to the quality of DPMs are a cause for concern.

⁷⁹ DPRRC, *41st Report* (Session 2022–23, HL Paper 248), paras 11 and 18.

48. In the Cabinet Office *Guide to Making Legislation*, departmental bill teams are reminded of the importance of taking our recommendations seriously.⁸⁰ Although this is said in the context of specific bill recommendations, we have no doubt that it would be intended to apply equally to our general recommendations about the framing of legislation. Following publication of *Democracy Denied?*, the *Guide to Making Legislation* was amended to reflect some of our recommendations and we welcome those changes. But changes to the guide only take us so far. If the message is not embedded in the culture of departments – in relation to both ministers and officials – and reflected in the bills brought to Parliament and in the quality of their accompanying DPMs, and if the message is not enforced by the PBL Committee in its decision about whether to allow a proposed bill to proceed, then “so far” will amount to not very far at all.
49. **In the Government response to this report, we therefore invite the Leader of the House of Commons, in her capacity as chair of the PBL Committee, to explain:**
- **why, given that the *Guide to Making Legislation* includes our statement of principles⁸¹ and instructs departments to consider our guidance for departments carefully when preparing a DPM, session 2022–23 has seen such a poor performance in terms of adhering to the principles promulgated by us;**
 - **whether Parliamentary Counsel, when instructed by ministers to draft a bill, are asked expressly to comply with our principles;**
 - **what steps are taken by the PBL Committee to scrutinise and challenge the quality of DPMs;**
 - **whether there have been occasions during the current Parliament when a bill has been delayed at the PBL Committee stage because either a DPM fell below the standard required or because the bill contained a delegated power for which there was no convincing justification; and**
 - **whether, when we comment adversely on a DPM, this is drawn to the attention of the PBL Committee and the relevant minister, with a view to ensuring that the same errors are not repeated.**
50. In *Democracy Denied?*, we set out a number of practical steps for both the Government and this Committee which were intended to promote the necessary re-balancing of power between Parliament and executive. For the Government, we made recommendations, amongst others, about the relationship between policy development and bill drafting, and increasing the use of pre-legislative scrutiny. For us, publishing this report is one of the steps we said we would take, along with continuing commentaries on the quality of DPMs. We also refer to taking evidence from ministers. Given the time constraints of having to report before committee stage, we raised this in the context of a recommendation that the Committee should have a “scrutiny reserve” so that committee stage could not begin until we had reported. Whilst recognising that this was a matter for the House, the Government

80 Cabinet Office, *Guide to Making Legislation*, (2022). See, for example, paras 15.30 and 15.31: https://assets.publishing.service.gov.uk/media/62fe365fe90e0703e1bb4844/2022-08_Guide_to_Making_Legislation_-_master_version_4_.pdf [accessed 13 December 2023].

81 *Ibid.*, para 15.3.

said that they had strong reservations about the proposal.⁸² But, they also said, “[m]inisters will endeavour to give evidence to the Committee in good time for the Committee to prepare its report” and, further, “[i]n general, we agree that it is best practice for the House of Lords to have the benefit of the DPRRC report before committee stage. This will be taken into consideration during discussions when scheduling legislation”.⁸³

51. **Taking evidence from a minister about a bill would be an exceptional step and not one that the Committee has to date taken. However, it remains part of the armoury of the Committee, and ministers and departments should be conscious of the possibility that this step may be taken and, if so, that we shall look to the Government to honour the commitments made about scheduling legislation accordingly.**
52. In response to *Democracy Denied?*, the Government said that they would welcome our end of session reports and that “[t]he Leaders of each House would be happy to give oral evidence to assist the Committee”.⁸⁴ Whilst those holding those Offices have changed since the response in January 2022, we are confident that the current incumbents would express a similar willingness. **Despite the uncertainties of the coming year, we shall consider whether to take up this offer on the part of the Leaders to come before us, particularly if the hoped for “marked improvement” absent in the last session fails to be demonstrated in the current session.**
53. The Committee was established in 1992, following a report by the Jellicoe Committee earlier that year which referred to the “considerable disquiet over the problem of wide and sometimes ill-defined order making powers which give Ministers unlimited discretion”.⁸⁵ Over 40 years later that disquiet remains as live an issue as ever. The purpose of the two reports, *Democracy Denied?* and *Government by Diktat*, was to bring about fundamental change by re-setting the balance of power between Parliament and the executive through changing the way in which primary legislation is framed and the extent to which legislative powers are conferred by that legislation. The reports were published two years ago. **We will continue to scrutinise the delegations of legislative powers in bills to the high standard which the House expects. If we are unable to detect the improvements sought, then we will consider further what measures we might recommend to the House to make more certain that they are achieved.**

82 Government response, DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report), p 5: <https://committees.parliament.uk/publications/8672/documents/88067/default/>.

83 *Ibid.*

84 *Ibid.*, p 15.

85 Select Committee on the Committee Work of the House, (Session 1991–92, HL Paper 35). Chaired by Earl Jellicoe.

APPENDIX 1: MINOR REVISION TO THE COMMITTEE GUIDANCE FOR DEPARTMENTS

To assist the Committee in scrutinising amendments to what is often a challenging deadline, paragraph 36 of the guidance for departments⁸⁶ states that both a supplementary DPM and the text of the relevant amendments should be sent to the Committee's email address. To reinforce the importance of the Committee receiving the supplementary DPM *and* the text of the amendments *at the same time*, the following paragraphs of the guidance are amended as follows (new text underlined):

“32. A supplementary memorandum, along with the text of the relevant amendments, must be provided when:

- any government amendment is tabled during the passage of the bill through the Lords which introduces a significant new delegated power or significantly amends an existing one. (It is not required if an amendment is simply giving full effect to a recommendation by the Committee or addressing a point raised by it);
- for any non-government amendment with significant delegated powers which the Government are able to indicate that they will support;
- when a bill which starts in the Lords is returned by the Commons with amendments which introduce significant new delegated powers or significantly amend existing ones.”

“35. Supplementary memoranda, along with the text of the relevant amendments, must be received on (or before) the day an amendment is tabled.”

86 DPRRC, *Guidance for Departments*, (November 2021): <https://committees.parliament.uk/publications/8225/documents/84262/default/>

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 13 December 2023, Members declared no interests.

Attendance

The meeting was attended by Lord McLoughlin, Baroness Bakewell of Hardington Mandeville, Lord Hendy, Lord Janvrin, The Earl of Lindsay, Lord Rooker and Lord Carlile of Berriew.