



**LORD PRESIDENT OF THE COUNCIL
LEADER OF THE HOUSE OF COMMONS
THE RT. HON. JACOB REES-MOGG M.P.**



The Rt. Hon. the Lord Blencathra,
Chairman of the Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW

Our Ref: JRM/NMP2155

24 January 2022

Dear Lord,

Thank you for your letter dated 23 November 2021 and the enclosed copy of the SLSC's report entitled 'Democracy Denied? The urgent need to rebalance power between Parliament and the Executive'. I am grateful for receiving a copy of the report in advance of its publication. I am also grateful for your letter of 6 January regarding the updated guidance on delegated legislation that will be issued soon. I will ensure this is circulated to all departments as well.

I would like to thank the Delegated Powers and Regulatory Reform Committee and the Secondary Legislation Scrutiny Committee for their inquiries and reports. I agree that better scrutiny leads to better legislation and I am grateful to the Committees for all their work in this area. I understand the desire of both Committees to adopt a more rigorous approach to legislating, although note that there will invariably be times when greater flexibility may be needed when legislating, for example, as part of an emerging policy response. We need to strike the right balance in all instances.

Please find the Government's response overleaf. The response responds to the elements of your report that are for the Government and not to elements that are for the Houses to decide.

With every good wish,

*Yours ever,
Jacob*

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**GOVERNMENT RESPONSE TO THE DELEGATED POWERS AND
REGULATORY REFORM COMMITTEE'S TWELFTH REPORT OF SESSION 2021-22
'DEMOCRACY DENIED? THE URGENT NEED TO REBALANCE POWER BETWEEN
PARLIAMENT AND THE EXECUTIVE'.**

Chapter 1: An urgent need for change

1. A substantial groundswell of concern is developing about the shift in power from Parliament to ministers. We take the view that a critical moment has been reached where action is needed to bring about significant change in the way in which legislation is framed so that it is, first and foremost, founded on the principles of parliamentary democracy, namely parliamentary sovereignty, the rule of law and the accountability of the executive to Parliament. (Paragraph 5)

The Government is fully committed to a strong Parliament that effectively scrutinises, challenges and improves government policy and its implementation. It is a key element of our constitution that Parliament holds the Government to account for its actions. The Cabinet Manual is clear on this: "*In the exercise of its legislative powers, Parliament is sovereign*"¹. The essential scrutiny role of both Houses of Parliament continues to ensure improvements and amendments are made to the Government's legislative programme. The past five years have offered ample opportunity to see how Parliament plays a central role in shaping the key issues that affect the people of the United Kingdom, whether on the UK's departure from the European Union, the response to the COVID-19 pandemic or other matters. Over the years, there have been substantial reforms that have seen the Government held to account with greater degrees of scrutiny.

The creation of departmental select committees provided parliament an opportunity to further scrutinise legislation, and recommendations from Committees such as the Procedure Committees in both Houses, as well as from the Reform of the House of Commons Committee,, have seen further powers conferred upon Parliament.

Chapter 2: Reasons for and against delegated legislation

2. Issues relating to whether delegated legislation should be amendable and whether parliamentary procedures could be changed to provide Parliament with a greater range of options than a simple "all or nothing" are beyond the scope of this report. That said, understanding what Parliament is currently able to do is integral to understanding why delegation of legislative powers by Parliament to the executive is constitutionally important. The limits on Parliament's ability to intervene in delegated legislation places an even greater significance on ensuring the appropriateness of the delegation in the first place. Where laws are passed

¹HM Government (2011) [The Cabinet Manual](#), paragraph 9 (viewed on 12 January 2022)

with little or no scrutiny, Parliament must do more to ensure that they do not amount to an abuse of power. (Paragraph 35)

The Government does not agree with the assertion that laws are passed with little or no scrutiny. Each bill is introduced into Parliament and managed in an appropriate way. Programming in the House of Commons has seen a majority of Public Bill Committees reporting early, and all groups of amendments debated at Report Stage since the 2016-17 session. In the Lords there is no programming and every amendment is debated. In the 2020-21 session, over 3000 amendments were debated, many of which led to changes and improvements to legislation. In addition, it is a matter of convention that where a reasonable request for a debate on a negative instrument has been made, time should be provided for debate.

Chapter 4: Familiar and emerging grounds for continued “considerable disquiet”

Skeleton bills

4. The appropriate threshold between primary and secondary legislation should not be dependent on the exigencies of timing but should be founded on the overarching principle that the principal aspects of policy should be on the face of a bill and only its detailed implementation left to delegated legislation. There is a long-standing maxim that ignorance of the law excuses no-one but if Parliament is ignorant of the law passed in its name, then how can the public be expected to know and obey it. (Paragraph 65)

5. Skeleton legislation signifies an exceptional shift in power from Parliament to the executive and entails the Government, in effect, asking Parliament to pass primary legislation which is so insubstantial that it leaves the real operation of the legislation to be decided by ministers. As such, it will rarely be justifiable. (Paragraph 66)

6. We recommend that:

- **Should the Government introduce skeleton legislation, the delegated powers memorandum should make an explicit declaration that the bill is a skeleton bill or clauses within a bill are skeleton clauses.**
- **Such a declaration should be accompanied by a full justification for adopting that approach, including why no other approach was reasonable to adopt and how the scope of the skeleton provision is constrained. (Paragraph 67)**

7. We invite the Government to provide further examples of bills which were, in

their view, *necessarily* skeletal — on grounds other than political expediency — and the justification for adopting the approach taken on each occasion. (Paragraph 68)

Each bill is drafted to give effect to the Government's intended policy, and in doing so a judgement will have been made in the individual case as to the degree to which the bill delegates power to ministers. It is then for the Government to make its case for the bill to Parliament, and for Parliament to debate and either agree, disagree or amend the delegated powers. It is the Government's view that there are some circumstances in which it is appropriate for bills to contain substantial delegations of powers, and where it proposes such a bill it will provide Parliament with a full justification for its approach.

The Government does not agree with the recommendation to include a declaration where a bill or clauses within it may be considered framework legislation. As your report sets out, the definition of such a bill would be difficult to prescribe.

Every bill is accompanied by Explanatory Notes, published on introduction, that explain the purpose of the bill and provide further detail to aid understanding of individual provisions. In addition, Government Departments with bills containing delegated powers must produce a Delegated Powers Memorandum, also published on introduction, detailing each delegated power in the bill and setting out the justification for the taking of the power and for the chosen parliamentary procedure to which the power is subject. These powers are then scrutinised by parliamentarians during the passage of the bill, and by the DPPRC, who report on each bill. The Office of the Leader of the House of Commons would welcome specific previous examples of where the Committee does not feel memoranda are to the standard required.

There is no set definition of a framework bill, and all bills introduced are judged by the Government to be drafted as appropriate to deliver the specific policy results desired. The Government's Parliamentary Business and Legislation Committee takes this consideration seriously, and is focused on scrutinising the readiness of legislation and the quality of supporting documentation in order to ensure the Government is making the best use of parliamentary time and is properly supporting Parliament in its scrutiny function. Bills will have varying degrees of delegated powers, each with their own justification as set out in the Explanatory Notes and the Delegated Powers Memorandum.

The Government has recently brought forward bills which create a framework for regulation, including the Professional Qualifications Bill.

The Professional Qualifications Bill sets the framework through which specific provisions for different professions can be made. The Delegated Powers Memorandum explained that "the changes appropriate to a particular profession will need to be woven

into the existing legislative scheme for that profession as a generic approach covering all affected professions is not practicable.”² The Government views these powers as necessary, but accepted the DPRRC’s recommendations and amended the bill to ensure more powers were subject to the affirmative resolution procedure.

8. We propose below that consideration should be given to the DPRRC having a “scrutiny reserve”, exercisable in exceptional circumstances only. A difference of opinion about whether a bill contains skeleton provision and requires a skeleton legislation declaration would amount to such an exceptional circumstance. This would allow the Committee time to take evidence from the minister and prepare a report before second reading. (Paragraph 70)

The Government believes that the DPRRC holds an important and valuable role in holding the Executive to account. However, the Government does not agree that the DPRRC should have a “scrutiny reserve”. Whilst Standing Orders are ultimately a matter for each House, the Government would have strong reservations around a ‘scrutiny reserve’ as outlined in the report.

It is the Government’s constitutional role to bring forward legislation, to be scrutinised and approved by Parliament, that it judges to be expedient to deal with the issues of the day. There will be instances where the Government needs to bring forward such legislation quickly, whether in response to particular circumstances or for some other reason.

If either House is not satisfied with the Government’s proposals or explanations, there are already various mechanisms available, including debates, amendments and votes, to express that view, invite the Government to think again or change the legislation in question entirely.

The Government sets out the delegated powers of a bill in the memorandum which Members of both Houses use when considering the bill. The Government takes the reports of the DPRRC seriously and will always give their recommendations serious consideration and provide a full justification if they disagree with any of them. Ministers will endeavour to give evidence to the Committee in good time for the Committee to prepare its report.

In 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.

² Department for Business, Energy and Industrial Strategy (2021) [Professional Qualifications Bill Delegated Powers Memorandum](#): page 2 (viewed on 12 January 2022)

9. We support the SLSC recommendation that the Government, together with the two Houses of Parliament and their Procedure Committees, should consider, following consultation, how the democratic deficit inherent in skeleton legislation can be remedied. (Paragraph 74)

The Government does not agree that there is a democratic deficit that is necessarily inherent in framework legislation. Any delegated powers in primary legislation will have been debated and scrutinised by Parliament, and there are various reasons why such an approach may be entirely appropriate. Parliament plays a valuable role in the scrutiny of delegated powers and all those involved in the preparation of legislation have a responsibility to assess thoroughly whether a proposed grant of a delegated power is appropriate. The Government does not, therefore, agree there should be exceptional procedures for bills with substantial delegated powers. The Government will continue to work to ensure that this is something that is properly scrutinised during the bill preparation phase so that powers are included in bills only where appropriate and where their use can be justified to Parliament.

However, in recognition of the concerns being raised, the Government will update the Guide to Making Legislation to include the statement of principles, which ministers and officials can use when considering the inclusion of delegated legislation in their bills.

Henry VII powers

10. Henry VIII powers are controversial, and for good reason. Every such power, and its scope, must always be fully justified. We will always deprecate the use of Henry VIII powers where they appear to have been included in a bill "just in case". (Paragraph 83)

11. That said, we acknowledge that, on occasion, it is appropriate to use them, albeit subject to the presumption that the affirmative procedure should apply to their exercise and that their scope should be constrained on the face of the bill. (Paragraph 84)

12. We welcome the offer made by First Parliamentary Counsel:

(1) to ensure that departments are aware of the Committee's concern about Henry VIII powers and; (2) to consider developing guidance about examples of Henry VIII powers which are likely to be regarded as appropriate. We will, of course, continue to consider each use of a Henry VIII power on its merits. (Paragraph 85)

The Government is committed to ensuring memoranda for the Committee contain full justifications for any 'Henry VIII powers' in Government Bills. We welcome the Committee's acknowledgement that there are cases where such powers are appropriate

and that each power needs to be considered on its own merits. The Government will develop guidance to help departments understand the issues around taking these powers and the factors to be considered when determining whether they can be justified.

The Government agrees that routine use of “just in case” powers is not appropriate. However, there will be instances where the inclusion of such a power is justified. There are circumstances when it is not possible to be confident that all consequential amendments of the wider statute book have been or can be identified at the time the bill is in Parliament. In these cases, taking a power to make any necessary consequential amendments that may be identified at a later date ensures the coherence of the statute book. Each bill, and any power contained within it, therefore, needs to be considered on its own merit.

The Office of the Parliamentary Counsel provides regular training sessions for policy-makers, bill team members and government lawyers about the use of delegated powers, and are working with the Government Legal Profession and the Policy Profession within the Civil Service to improve awareness of the issues within departments. We would welcome the opportunity for the DPRRC to contribute to training to explain directly the Committee's perspective.

Guidance

13. We share the view of the Leader of the House “that guidance should not be used to circumvent the usual way of regulating a matter”. Mandatory guidance is such a circumvention. The very concept is a contradiction in terms and a power to make mandatory guidance will never be appropriate. Requirements which have legislative effect should always be expressed in legislative language, either in primary or secondary legislation, and subject to parliamentary oversight. (Paragraph 94)

14. When drafting a delegated powers memorandum for a bill which includes a power to issue guidance, departments must clearly explain and justify the character of the guidance. Where guidance is, in effect, legislative in character, it should be laid before Parliament and subject to parliamentary scrutiny. (Paragraph 97)

15. We share the concern of the SLSC, the JCSI and others about inconsistencies between legislation and guidance, and the use of guidance to fill gaps in legislation. We support the SLSC in its recommendation that it is crucial that

departments ensure a clear and appropriate distinction between legislation and guidance. (Paragraph 100)

It is Government policy that guidance should not be used to circumvent the usual way of regulating a matter. If the policy is to create rules that must be followed, the Government accepts that this should be achieved using regulations subject to parliamentary scrutiny and not guidance. The purpose of guidance is to aid policy implementation by supplementing legal rules. This remains the Government's policy and there is no intention to alter this approach.

As a general principle, legislation needs to be detailed and clear enough that guidance does not need to be relied upon for the purposes of interpretation. Similarly, where guidance accompanies legislation, it is important that it describes the effect of the legislation accurately.

Other disguised legislative instruments

16. The number of occasions on which the Government have sought to acquire legislative powers under the guise of various devices not subject to parliamentary scrutiny is perhaps the most striking and disturbing of recent developments that have had the effect of shifting the balance of legislative power from Parliament to the executive. This finding is especially significant given that it has emerged so prominently at a time when Brexit and the pandemic have given so many other examples of a shift in power. (Paragraph 102)

17. We have already referred to the statement by the Leader of the House that guidance should not be used to circumvent the usual way of regulating a matter. The same is also true of these other devices. Provision in bills giving ministers powers to make determinations, directions, arrangements or to issue codes of practice, public notices etc. — where they are in effect camouflaged legislation — is an unacceptable ploy and, as matter of principle, should not be sought by the Government in the bills they put before Parliament. (Paragraph 103)

18. Furthermore, 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. (Paragraph 104)

19. In the absence of convincing reasons to the contrary, therefore, we recommend that they should not be used. Where the Government take the view that they have convincing reasons, then the use of these devices – and the level of scrutiny applied to them – should be clearly identified in the delegated powers memorandum and fully justified. (Paragraph 105)

20. Where a department is uncertain as to whether use of one of these devices amounts to delegation of a legislative power, they should err on the side of caution and provide a clear explanation in the delegated powers memorandum about why the view has been taken that the power is administrative rather than legislative in character. (Paragraph 106)

There are many opportunities for Parliament to scrutinise provisions in bills giving ministers powers to make determinations, directions or arrangements or to issue codes of practice and public notices. The use of powers in a bill and the rationale for including them are included in the memorandum prepared for the Delegated Powers and Regulatory Reform Committee, which Members of both Houses can use to consider the Bill.

Legislative sub-delegation of power

21. Tertiary legislation has as much legal force as any other form of law. Conferring a delegated power on ministers to sub-delegate power is potentially a more egregious erosion of democratic accountability than a simple delegation to a minister to make secondary legislation. Where the government seek a legislative sub-delegation of power in a bill, the power should be limited and specific, and its exercise, and the exercise of sub-delegated powers, should be subject to parliamentary scrutiny. Consideration should also be given to including a statutory duty to consult those affected by the exercise of a sub-delegated power. The delegated powers memorandum should provide a compelling justification for the power, why it is needed, how it is intended to be exercised and how it is to be constrained. The memorandum should also explain the choice of parliamentary scrutiny to be applied to the exercise of the sub-delegated power and, where it differs from the level of scrutiny applied to the secondary legislation containing the sub-delegated power, provide a compelling justification for the divergence. (Paragraph 111)

22. Where, in turn, an instrument — made under powers delegated by primary legislation — delegates a power to either ministers themselves or another body to make tertiary legislation, the explanatory memorandum accompanying the instrument should state this and explain its scope and why it is needed. (This is a matter to which the SLSC refers in its parallel report.) (Paragraph 112)

As the Leader of the House of Commons set out in his letter to the Joint Committee on Statutory Instruments:

The exceptional times of the pandemic have given rise to the need for exceptional legislation, however, I agree that this should not become an opportunity to relax the principles of the rule of law and depart from the presumption against the sub-delegation of legislative power. This is a long-standing and important principle and one that the Government will continue to consider in its approach to legislation. In preparing all our legislation relating to COVID-19 we have been conscious of the rule of law and the need to act within the relevant powers available³.

The Government continues to uphold a presumption against the sub-delegation of legislative power and so would expect any provision in a bill that allows sub-delegation to be fully justified.

However, we feel that including a specific heading in the explanatory memorandum for instances where such a power may be being taken in a statutory instrument is disproportionate. It is important that the explanatory memorandum is kept as concise as possible, and the introduction of a further heading may lead to the document becoming unmanageably complex. Instead, the Government will update existing guidance for drafters to make clear that the “Policy background” section should provide an explanation of any legislative sub-delegation.

Made affirmatives

23. When drafting a delegated powers memorandum, departments should ensure that where the negative procedure is chosen on the ground that there is insufficient time for an affirmative, the memorandum explains why the “made affirmative” procedure is not applied. The threshold between the negative and the affirmative procedure depends on the substance of the instrument and should not be determined by political expediency. (Paragraph 117)

24. We recommend that, where an instrument is subject to the made affirmative procedure, the Government should undertake to schedule a debate on the instrument sooner rather than later. (Paragraph 119)

25. We acknowledge that the recommendation above will have implications for the ability of the SLSC and the JCSI to report on an instrument in time for the debate. We therefore further recommend that, where a debate is scheduled soon after a made affirmative has been laid, the formal approval motion should be deferred and taken later, either formally or as a second debate if either the SLSC or the JCSI raise matters of concern. (Paragraph 120)

³ Leader of the House of Commons (2021) [Government response: Letter to Chair of JCSI from the Leader of the House of Commons](#). (viewed: 12 January 2022)

The Government firmly believes that decisions are made stronger through scrutiny and debate, and is committed to facilitating that scrutiny wherever possible. It is paramount that the NHS and country as a whole is protected. Throughout the COVID-19 pandemic, the Government has had to respond to a changing landscape. For significant national measures which have effect in the whole of England or are UK-wide, the Government has committed to consulting Parliament and, wherever possible, holding votes before such regulations come into force.

While the Government agrees that SLSC and JCSI reports on SIs assist parliamentarians in their scrutiny of instruments, the need to give certainty to the public and to act swiftly in responding to the emerging pandemic means it is not always possible to delay important legislative changes. Regulations remain subject to parliamentary scrutiny and approval in the normal way as set out in the terms of the parent Act.

Conclusion

26. Long-standing issues of skeleton legislation and the use of Henry VIII powers remain matters of significant concern. Meanwhile new and complex issues have emerged. These developments cannot be explained simply as an aberration prompted by the recent “exceptional times”. We have made some proposals which are intended to address aspects of the issues identified. In the following chapter, however, we consider how more radical change can be brought about so that the relationship between Parliament and the executive can be re-set and a balance restored. (Paragraph 121)

The Government recognises the importance of reflecting well-developed policy in appropriate legislative detail. Delegated legislation is an essential part of our legislative framework and all legislation, including delegated legislation, should be clear, precise and proportionate and subject to appropriate scrutiny. We are grateful for the important role the DPPRC and SLSC in particular have in scrutinising delegated legislation and making recommendations. The Government considers each report carefully.

Chapter 5: Ways to re-set the balance of power

Asserting the fundamental principles of parliamentary democracy

27. It appears that bill teams are, in effect, being encouraged to regard the inclusion of delegated powers, and the preparation of a delegated powers memorandum, as merely a political or practical matter. The absence in the Cabinet Office Guide to Making Legislation of any explicit statement of the

underlying principles is, in our view, a fundamental flaw. We therefore recommend that the Guide should be amended to include a statement of principles which should underpin any decision by ministers about whether a bill should include delegated legislative powers. (Paragraph 126)

The Government does not agree that bill teams are being encouraged to regard the inclusion of delegated powers, and the preparation of a delegated powers memorandum, as merely a political or practical matter and has committed to updating the Guide to Making Legislation to include the statement of principles. As already stated, the Delegated Powers Memorandum sets out the powers in the bill along with a justification for taking them. In addition, the Government's Parliamentary Business and Legislation Committee is robust in stress-testing whether the inclusion of these powers in the Bill is appropriate. However, it is for Parliament to scrutinise each bill and, ultimately, have the final say on whether the powers should be included and the form of any power.

What departments can do

28. We welcome the Lord President's assertion that bills should be supported by well-developed policies and also the steps that he has taken to ensure that the PBL Committee reinforces this message in departments. We have no doubt however that, on occasion, the processes of policy development and bill drafting, and the parliamentary legislative timetable are misaligned. As a result, powers are included in bills which are, in effect, "a tool to cover imperfect policy development". This is unacceptable, and we look to the Government to undertake the systemic reforms necessary to prevent its happening. (Paragraph 129)

In the Government's response to the House of Lords Constitution Committee Report, titled "The Legislative Process: The Delegation of Powers", we set out that *"bills which contain unduly vague powers because policy decisions have yet to be taken will usually be unacceptable to Parliament"*⁴. The Government maintains this view but reiterates that there continues to be a case for Bills with substantial delegated powers. Such bills would justify the powers taken in the Delegated Powers Memorandum.

Every delegated power included in a bill will continue to be set out and justified in the delegated powers memorandum. This allows them to be properly scrutinised both within government and in Parliament. We commit to strengthen the Guide to Making Legislation to ensure it reflects the DPRRC's updated guidance on delegated powers.

⁴ HM Government (2019) [Government Response to the Lords Constitution Committee Report: The Legislative Process: The Delegation of Powers](#), page 5 (viewed on 12 January 2022)

The Government will seek to ensure an appropriate balance is made between measures that are put on the face of a bill and those which, for various reasons, will need to be delegated. It is ultimately a matter for Parliament as to whether any powers are appropriate.

29. We endorse the Constitution Committee's view that pre-legislative scrutiny of bills should be regarded as an integral part of the wider legislative process. The Guide states that publication of a bill in draft is the "default position" and that draft bills should be submitted to parliamentary pre-legislative scrutiny where possible. We recommend that the Government should refresh their commitment to publishing more bills in draft. (Paragraph 135)

The Government recognises that there are often real benefits to publishing draft bills to allow for pre-legislative scrutiny and commits to doing so where possible. It would not be practical to do this for all bills, for example immediately after general elections or for matters that required an immediate response. The Government will continue to consider which bills would benefit most from pre-legislative scrutiny and inform Parliament in the usual way.

What the DPRRC can do

30. We have no doubt that scrutiny by the DPRRC has a pre-emptive effect and we have noted the evidence of the Lord President that that effect has been "profound". It cannot however be measured, and earlier chapters of this report have caused us to have some reservations about the Lord President's assessment of the extent of the Committee's impact. (Paragraph 142)

31. We urge the Government to amend the Guide so that it introduces an expectation that the Government will accept most, if not all, of the DPRRC's recommendations and, where any recommendation is not accepted, a full justification should be provided for not doing so in the Government's response. (Paragraph 146)

The work of the DPRRC is valued by the Government, and the Government's internal processes and the preparation of the Delegated Powers Memorandum ensure that each power is fully justified before a bill is brought forward. The Government gives serious consideration to all of the recommendations made by the DPRRC, and accepts the recommendations made unless there is a strong and full justification for not doing so. There will be times when the Government and Committee have a difference of opinion on when it is appropriate to use delegated powers rather than putting requirements on the face of the bill. The Government believes this is right. We will also update the Guide

to Making Legislation to set out that, where the Government does not agree with the recommendations made by the DPRRC, it should engage with the DPRRC and their advisors before responding to the report.

32. Reference is made to the Committee's guidance in the Guide and departments are told that they should consider it carefully. We recommend that the Committee's new guidance should be set out in full in the Cabinet Office Guide. (Paragraph 148)

The Government is grateful to the Committee for updating its guidance. The Committee's guidance is referenced and linked in the Guide to Making Legislation and it would not be practical to annex the Committee's guidance. The Guide to Making Legislation asks Government Departments to consider the Committee's guidance carefully and the Government will ensure that revisions to the guidance are circulated to the relevant officials.

33. We will continue our practice of commenting on the quality of delegated powers memoranda, in part to assist departments in preparing memoranda for future bills. (Paragraph 150)

The Government welcomes the DPRRC's practice of commenting on Delegated Powers Memoranda.

34. It will remain our usual practice to report on bills after second reading and before committee stage in the House of Lords. Exceptionally, however, where appropriate and where timing permits, the Committee may report on a bill while it is in the House of Commons or before second reading in the House of Lords. (Paragraph 154)

35. We recommend that the Government should refresh their commitment in the Guide that a written response to Committee reports should be provided before committee stage. Where a written response cannot be provided in time, a written explanation should be given to the Committee before committee stage which should include an indication of when a response will be provided. (Paragraph 156)

We will strengthen the language in the Guide to Making Legislation to make clear that a written response to DPRRC reports should ideally be provided before Committee Stage and, where this is not possible, the relevant minister must inform the Committee and set out when the response will be sent.

36. We invite the Procedure Committee and the House to consider amending

Standing Orders to allow the DPRRC a “scrutiny reserve” so that, in cases where a bill includes most exceptionally wide delegations for which there has been no satisfactory justification or the Committee takes the view that the bill contained skeleton provision, time will be available for the Committee to request a minister to provide further justification. Under the “scrutiny reserve” the committee stage could not proceed until the Committee had reported to the House. (Paragraph 160)

Whilst the Standing Orders are ultimately a matter for each House, as previously set out, the Government would have reservations around a ‘scrutiny reserve’ as outlined in the report. The Government’s view is that, in exceptional circumstances, it would need to progress legislation notwithstanding any mechanism to delay until the DPRRC has reported to the House.

37. We will resume the Committee’s previous practice of publishing an end of session report to the House, raising concerns about issues relating to the delegation of powers and making specific comments about the quality of delegated powers memoranda and Government responses. In preparing the report, we may also invite oral evidence from the Leaders of the two Houses. (Paragraph 162)

The Government welcomes the Committee’s end of session reports. The Leaders of each House would be happy to give oral evidence to assist the Committee.

38. We see these end of session reports, along with reports from other committees such as the SLSC, JCSI and the Constitution Committee, as an important resource which will inform, or prompt, regular debates in the House about the quality of legislation and the explanatory materials submitted in support of it, and about the wider issues raised in this report. (Paragraph 163)

The Government agrees that the end of session reports, as well as reports from other committees, are an important resource. Each report is carefully considered by the Government.

Chapter 6: Culture change within departments: a revised Guide to Making Legislation

39. The Guide is currently a practical document to assist bill teams. With the addition of the new material, we believe that it has a broader purpose: to remind departments, both ministers and officials and also the PBL Committee, of the constitutional principles underlying the relationship between Parliament and the

executive. Adoption and promulgation of a revised Guide will therefore be a powerful mechanism, we believe, for re-setting that relationship. We look forward to its introduction. (Paragraph 166)

The Government agrees that the Guide to Making Legislation is a practical reference document for bill teams to use to understand how to take a bill through Parliament. It is not possible for the Guide to Making Legislation to be exhaustive as each bill is different and requires a bespoke approach. A revised Guide to Making Legislation will be published shortly, with a further version, including revisions made as a result of this response in due course.