



House of Commons

ODPM: Housing, Planning,
Local Government and the
Regions Committee

**Government Response
to the Committee's
First Report of Session
2004–05, on the Draft
Regional Assemblies
Bill**

1st Special Report of Session 2004–05

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The ODPM: Housing, Planning, Local Government and the Regions Committee

The ODPM: Housing, Planning, Local Government and the Regions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Deputy Prime Minister and its associated bodies.

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The following member was also a member of the Committee during the parliament.

Mrs Eleanor Laing MP (*Conservative, Epping Forest*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/odpm.cfm.

Committee staff

The current staff of the Committee are Lynn Gardner (Joint Committee Clerk), Jessica Mulley (Joint Committee Clerk), Charlotte Littleboy (Second Clerk), Ben Kochan (Committee Specialist), Ian Hook (Committee Assistant), Ian Blair (Chief Office Clerk) and Emma Carey (Secretary).

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Government response to the First Report from the Committee on the Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions

1. On 5th January 2005, the Committee published its first Report of Session 2004-05 as HC 62, on the Draft Regional Assemblies Bill. The Government's response, in the form a memorandum to the Committee from the Office of the Deputy Prime Minister, was received on 8th March 2005.
2. The Government's response is published as an Appendix to this Report.

Appendix 1: Government response

Introduction

Recommendation 1: [The Select Committee's report] aims to put down some markers should the Government in future decide to return to the question of introducing elected regional assemblies, and to point to areas where future legislation would need to be more ambitious than the draft Regional Assemblies Bill in order to create regional bodies that are fit for purpose.

The Office of the Deputy Prime Minister (ODPM) published the draft Regional Assemblies Bill with explanatory notes and regulatory impact assessment¹ and accompanying policy statement² on 22 July 2004. The ODPM Select Committee took written and oral evidence on the draft Bill during Autumn 2004 and published its report on 5 January 2005³. This document is the Government's response to the Select Committee's report.

On 4 November 2004 a referendum was held in the North East on the establishment of an elected regional assembly in which 78% voted against an assembly. Just under 48% of the electorate voted. In light of this result, the Deputy Prime Minister announced to Parliament on 8 November that the Government would not be introducing the Regional Assemblies Bill nor bringing forward orders calling referendums on elected assemblies in Yorkshire and the Humber and the North West. The Select Committee has reflected this in its report.

The Government is grateful to the Select Committee for considering the draft Bill and for producing its report. The Government will consider the Select Committee's comments and recommendations if and when it returns to the question of elected regional assemblies.

¹ The draft Bill, explanatory notes and regulatory impact assessment are available at: <http://www.official-documents.co.uk/document/cm62/6285/6285.pdf>

² The Policy Statement is available at: http://www.odpm.gov.uk/stellent/groups/odpm_regions/documents/page/odpm_regions_029965.hcsp

³ The Select Committee's report is available at: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmmodpm/62/6202.htm>

However it has no present plans for further work on these issues. Accordingly, the following response comments on some of the Committee's recommendations but takes no position on others.

The Committee's recommendations

Draft Bill

Recommendation 2: We recommend that the Government should, in future, demonstrate its commitment to pre-legislative scrutiny and facilitate the scrutiny process by publishing complete Bills in draft.

Recommendation 3: We ... recommend that the drafts of [statutory guidance and delegated legislation] should have been published for consultation with stakeholders.

The Government believes that the publication of the draft Bill was helpful in informing the voters of the North East before the referendum. There were few substantial omissions from the draft Bill and some of them were fairly technical - such as the transitional arrangements - or would have been very similar to existing provisions in local government legislation - such as the code of conduct regime. What could be expected in respect of the missing areas was explained in detail in the accompanying policy statement. As Nick Raynsford explained to the Committee, producing a Bill is a considerable piece of work and it would not have been feasible to publish a complete Bill, with all of the draft secondary legislation and statutory guidance, in the time available before the referendum.

The Committee also questions whether the guidance would have been published in time to allow any Parliamentary scrutiny⁴. It was the Government's intention to publish the important guidance in good time for scrutiny during the passage of the Bill. Key secondary legislation would similarly have been published in draft in good time for discussion at Commons Committee stage. This would have allowed Parliament to consider the guidance and secondary legislation and for stakeholders to comment.

Powers and resources

Recommendations 4, 7 and 8: the general power be supplemented by a clearer definition of a core set of specific functions

Recommendation 5: The requirement ... to promote sustainable development should be backed up by a requirement to undertake sustainability appraisals.

Recommendation 6: a suitable statutory commitment to promoting equality and diversity should be included.

The Government notes the Committee's comments on the general power. The general power would have allowed elected assemblies a significant degree of flexibility over what they wished to carry out and was therefore one of the most powerful weapons in their armoury. The limitations on the general power were designed primarily to clarify the role of the assembly in policy areas where other organisations and institutions – such as local

⁴ paragraph 16, Volume 1, Select Committee report

authorities, Parliament or the NHS - have primary responsibility. Similar broad purposes have worked well for the Greater London Authority and for local authorities.

The Committee notes concerns⁵ that an assembly might only follow one part of its general power and ignore the other elements. As the Bill was drafted, the three strands of the general power were equal in weight and an assembly which unreasonably placed one above the others would have laid itself open to legal and political challenge.

The Government intended to issue guidance on the use of the general power. This would have made it clearer how exactly the power might be used. If that guidance had been issued many of the Committee's concerns about the power might have been allayed.

The Government does not share the Committee's view that elected assemblies had insufficient powers to attract a new breed of politicians or the right calibre of people to stand for election, particularly as assemblies would have been tightly focussed bodies with a small membership. However, this could ultimately only be tested when the assemblies were established.

If the Government decides to consider again elected regional assemblies, it will consider the Committee's recommendations on sustainability appraisals - which would have potentially formed part of the assembly's annual report to the region.

The Government agrees with the Committee that diversity and equality issues are very important and would have been key to an elected assembly's responsibilities. However, the Government was surprised by the Committee's recommendation to include a "statutory commitment to promoting equality and diversity" as it believes this is covered in clause 49 of the draft Bill⁶. Furthermore, Schedule 2 to the draft Bill ensured that the Sex Discrimination (Election Candidates) Act 2002 would apply to an election to a regional assembly in the same way as other elections.

Managing three tiers of government

Recommendations 9 and 10: should have been ... a formal statement on the face of the Bill of a general presumption that local functions should not be absorbed by the regional level ... should include a requirement that [elected regional assemblies] have a formal structure for involving local authorities

Recommendation 11: Guidance to elected regional assemblies and the Government Offices in the regions should emphasise the assemblies' role in overseeing the work of the Government Offices in the Regions.

Recommendation 12: other departments were not signed up to the proposals

⁵ paragraph 20, Volume 1, Select Committee report

⁶ Clause 49 obliged assemblies: "(a) to promote equality of opportunity for all persons, regardless of their sex, their age, their sexual orientation, their religion or any disability that they may have;

(b) to eliminate unlawful discrimination;

(c) to promote good relations among persons of different sexual orientations and different religions"

Recommendation 13: The fact that an issue cannot be addressed adequately by an individual region working in isolation does not necessarily mean that it is most appropriate to resolve the issue within Whitehall.

As the Committee says, the Government was clear on a number of occasions, including Ministerial statements to Parliament and published documents, that there should be no overlap or confusion between the role of an elected assembly and local government. An elected regional assembly would have had a number of strategic functions and not been involved with providing services, unlike a local authority. However, we feel that it would have been difficult to put this on the face of the Bill - legislation is not the place for making policy or political statements, it can only be used to change the law. The limitations on the general power were designed to make sure that conflicts with local authorities were kept to a minimum – for example that an elected assembly could not provide housing as this is a key local authority and housing association responsibility.

We agree that assemblies would have needed to work closely with local authorities. That is why the Bill specifies that local authorities be "assembly participants"⁷. But the Government did not want to specify the formal structure but preferred instead to let each region decide the arrangements that would best suit that region. There is no guarantee that the same arrangements would be appropriate in each region and it is more compatible with the principle of devolution to allow elected assemblies decide this for themselves.

The Government had no plans to require elected assemblies to oversee the role of Government Offices for the Regions (GOs), although some functions would have been transferred from GOs to assemblies, the two organisations would have needed to work closely together. Any such oversight of the remaining functions would have resulted in confused lines of accountability - officials in Government Offices are part of the civil service and report through to Ministers in Whitehall, who in return are accountable to Parliament. Elected regional assemblies would have been directly elected and would not have been accountable to Parliament.

Policy areas

Recommendations 14, 15 and 23: sufficient resources and clout are devolved .. to make a difference in terms of funding from Government departments... there is a strong case for pushing regionalisation further.

Recommendation 16: recommend that elected regional assemblies act as regional transport authorities... recommend that [nationwide] agencies, such as the Highways Agency and the national railways authorities are required more explicitly to take

⁷ Clause 53 states:

"An assembly must make arrangements to encourage and facilitate the participation (to such extent as the assembly thinks appropriate) of each of the following persons and organisations (assembly participants) in the exercise of its functions:

(c) local authorities in the region"

account of assemblies' regional priorities and consult on the regional dimensions of their ... programmes

Recommendation 17: adult training budgets being devolved to elected regional assemblies as a test case ... with ... more thoroughgoing devolution of resources to follow if the first stage proved successful

Recommendation 18: dual funding of housing associations by elected regional assemblies and the Housing Corporation ... would have been unsatisfactory

Recommendation 19: unconvinced of the rationale for establishing regional fire and rescue services as functional bodies of elected regional assemblies

The Committee makes a number of recommendations about the policy areas and functions of elected regional assemblies, including recommendations about their transport, learning and skills and housing functions. The broad thrust of the Committee's recommendations is that the powers were insufficient and should be strengthened. The Government believed that the package of responsibilities offered a feasible and credible package, but did not rule out developing these further in the future. If the Government does bring forward further proposals for elected regional assemblies, it will look closely at the Committee's recommendations on the assembly's policy areas, in the light of subsequent developments in those areas.

Funding

Recommendation 20: [Government] should adhere to the idea of a "single pot" block funding

Recommendation 21: elected regional assemblies should have precepting powers and should be fiscally accountable

Recommendation 22: Government needs to estimate the likely costs and benefits of setting up assemblies

The Government agrees with the Committee that assemblies would need flexibility over how their resources should be spent. This was made clear in the policy statement which accompanied the Bill:

“They would have considerable freedom under their general purposes to spend their funding as they judge best, subject to:

- Their helping to achieve in their region a small number of targets agreed with central government; and
- The conditions of any grants they may be given – although their funding will primarily come as a block grant.”

The Committee recommends that separate council tax bills should be issued by elected assemblies. This is not a practical or economic way of collecting tax, but council tax bills would have distinguished between the amount for the local authority collecting the tax and which for the elected assembly, just as council tax bills in London currently differentiate

between the London Borough collecting the tax and the Greater London Authority. In short, precepts are always listed separately on council tax bills.

The Government does not agree that it undertook insufficient financial planning and is disappointed that before reaching this conclusion the Committee did not request further information on how the sums were calculated. Much of this information had already been sought through Parliamentary Questions and was therefore in the public domain. The Government does not agree that it would have provided inadequate resources to elected assemblies, although it recognises that many organisations would prefer to be more generously provided for. The Government made clear as part of the Spending Review that it would meet the full costs of establishing elected regional assemblies - see http://www.hm-treasury.gov.uk/media/AB3/D4/sr2004_23.PDF. The costs were estimated by looking at the costs of the Greater London Authority as well as the costs of previous local government reorganisations in the 1990s.

Set-up costs would have varied from region to region, mainly because of the different sizes of their electorates. But as the table below shows we expected these to be around £30 million in each region. This estimate includes all costs necessary to establish an assembly, including the cost of referendums, local government reviews and the first elections. Using the examples of the North East and the North West the estimated set-up costs were as follows (estimates are rounded to the nearest £0.25m and include the costs of local referendums):

AVERAGE NORTH EAST and NORTH WEST

	Estimated cost (£m)	% of set-up costs
Local Government Review	1.75	6.3
Referendums	12	38.9
Elections	6.5	21
Staff / transition costs	7	26.3
Accommodation	2	7.5
Total	29.25	100

We estimated that assemblies would have cost between £24 and £33 million a year to run depending on their electorate and number of members. But £5 million of this cost would have been directly offset because staff would have transferred from existing bodies, such as the region's Government Office. This would have resulted in the actual amount of new expenditure being about £19 million in the North East, which would have been paid for partly by central government grant and partly by council tax. Assembly grant for the first full year would have been set so as to give a council tax precept of around 5p a week for band D properties, with other bands paying proportionately more or less. In the North East, less than £2m would have been raised from council tax payers.

However, these costs would have been offset by the money saved by running a streamlined single tier of local government rather than a more costly two-tier local government structure. The costs associated with any implementation of local government reorganisation were set out in the leaflet that was distributed to every household in the North East in August 2004. This made clear the reduction in running costs each year, as well as the upfront costs needed to realise these savings (which the Government would have paid). This can be seen at (please use both links):

http://www.odpm.gov.uk/stellent/groups/odpm_about/documents/pdf/odpm_about_pdf_031120.pdf

http://www.odpm.gov.uk/stellent/groups/odpm_regions/documents/page/odpm_regions_035526.pdf

Constitutional and electoral issues

Recommendations 24, 25 and 26: we recommend that the additional member system should not be used to return members.. the detail should be included in a draft Bill and not left to the discretion of the Secretary of State

Recommendation 27: the intention that elected regional assemblies would comprise one-third regional members and two-thirds constituency members... should be stated in a draft Bill

Recommendations 28, 29 and 30: an assembly with the size range proposed might struggle to perform its proposed functions... a maximum number of members should be imposed, perhaps in the region of 45 - 50

Recommendations 31 and 32: agree with the Government's proposal to establish a cabinet structure ... the Government should reflect on the experiences of other devolved bodies when producing statutory guidance on the operation of the cabinet structures... agree with the Government's proposals to give a significant degree of flexibility regarding the size of [the] executive

Recommendation 33: concerned about the scope of the proposed powers which could be exercised by an executive on behalf of an elected regional assembly

Recommendations 34 - 39: the main job of scrutiny [would] need to be performed by smaller sub-committees ... the proposed size of elected regional assemblies would make it difficult for members to do justice to their scrutiny role... the political composition of the review and monitoring committees reflecting the composition of the backbench membership would be detrimental to [their] role... powers that the review and monitoring committees would have are inadequate

Recommendation 40: unfortunate if backbench members were paid only a part-time salary

The Government does not agree with the Committee that first past the post would be a better electoral system for elected assemblies. The Greater London Authority is a comparable size to that proposed for elected regional assemblies and has a successful AMS

voting system. The reasons why the additional member system was chosen were set out in the *Your Region, Your Choice* White Paper.

The reason why the Government felt unable to specify the exact proportion of regional to constituency members on the face of the Bill was because the overall number of members would have varied from assembly to assembly and because it would have depended on advice provided by the Electoral Commission when considering how to draw elected regional assembly constituencies. The draft guidance to the Electoral Commission for the North East was published for consultation in September 2004⁸. This indicated that the Government felt that as the North East was the smallest region it should have 25 members, and that the number of constituency members and electoral areas should be within the range of 15 - 17 (ie approximately two-thirds of 25, as set out in the White Paper). The consultation paper then suggested a number of factors that the Electoral Commission might want to consider when working out the exact number of constituencies.

A small and streamlined assembly, with a maximum of 35 members, was considered consistent with the assemblies' range of functions and its strategic role. Assemblies would not, in the main, be responsible for direct service delivery to their constituents and members would therefore not have the same role as MPs or local councillors.

The Government felt that it was consistent with the principle of devolution to allow assemblies considerable discretion over how to operate their affairs. We are therefore pleased that the Committee accepts the cabinet structure for assemblies and that assemblies would be given a significant degree of flexibility over how to compose their executives. We also recognise that the Committee agreed that assemblies should be given flexibility over how to establish their scrutiny powers.

Elected assemblies were designed to have strong executives held to account by backbenchers with strong scrutiny powers. It is important that an elected assembly could be dynamic and take quick decisions on key issues, whilst ensuring that there was full democratic accountability. The Government believes that the balance was about right, but would look again at the Committee's recommendations should elected regional assemblies be considered again.

The Committee expresses concern that the full Review and Monitoring Committee (RMC) could have as many as 32 members, although in larger assemblies it might be expected that the executive would have more than three members. It is correct that they could have that many members, but we would have expected assemblies to take into account lessons learnt from other organisations, such as the House of Commons, when establishing their scrutiny arrangements. So if the full RMC was 32 members, we would have expected much of the work to be handled by sub-committees – but how to manage this would have been for the assembly themselves to decide.

Taking account of the ability to have sub-committees, the Government does not agree that the backbench members would have been overloaded by scrutiny work. Scrutiny would be the primary responsibility of the backbenchers and we believe that they would have had

⁸ See http://www.odpm.gov.uk/stellent/groups/odpm_regions/documents/page/odpm_regions_031098.pdf

adequate time to carry it out effectively, but we would look at this again, should elected regional assemblies be considered again.

The Committee rightly observes that political balance in the RMC would work differently from that in local authorities and Parliament in that the committee would be representative of the backbenchers, not the assembly as a whole. This is seen as a strength, rather than a weakness, giving the RMC a stronger separation from the executive. It was consistent with the Government's aim to have assemblies which operate more by consensus than conflict.

The Government notes the Committee's concern about the scope of the powers which may be exercised by the executive on behalf of the assembly. The Government believes that whilst there is a difficult balance to strike between a dynamic executive able to respond to situations quickly and democratic scrutiny and oversight, a satisfactory balance was set out in Clause 33 of the Bill.

We do not agree that the only people able or willing to take on a part-time role would be dual mandate holders, the retired and unemployed. There are many people in the workforce, especially women, who actively seek part time employment and we do not therefore agree that this would have prevented high quality candidates from standing for election. Indeed, many potential candidates are likely to have wanted to maintain a link with their occupation or profession.

Stakeholders

Recommendations 41 and 42: welcome the requirement for assemblies to ... encourage stakeholder participation... statutory guidance would be useful in ensuring that elected regional assemblies do not neglect this duty

Recommendation 43: co-option of non-elected members to the Review and Monitoring Committee ... should be encouraged... giving these members voting rights, however should be treated with extreme caution

We are glad that the Committee agrees that stakeholders would have an important role to play in elected assemblies and the Bill attempted to put in place arrangements to facilitate this. It was the Government's intention to offer assemblies guidance on how best to involve stakeholders in their work.

The Government recognises the Committee's concern about co-opted members being entitled to vote in RMCs, but considers that sufficient safeguards apply. This arrangement is currently permitted in local government and is designed to make sure that co-opted or stakeholder members work effectively with the rest of the Committee.

Conclusion

The Government is grateful to the Committee for its helpful review of the Bill and will consider the recommendations again should there be further consideration of elected regional assemblies.

Appendix 2

The Committee published a volume of oral and supplementary evidence on 5 January 2005 for its inquiry into the Draft Regional Assemblies Bill. The Association of Colleges submitted written evidence to this inquiry, unfortunately, due to an administrative error during the printing process, their supplementary memorandum was not printed in its entirety. The supplementary memorandum is attached here in full.

Supplementary Memorandum by the Association of Colleges (AoC) (DRA 47(a))

During the summer the Association of Colleges submitted written evidence as part of the Committee's inquiry into the Draft Regional Assemblies Bill. After further consultation with our members we would like to make further comments (below).

We have the following comments on specific clauses of the Draft Bill:

Clause 43

The AoC agrees that the general purposes of a regional assembly.

Clause 44

The AoC welcomes the restriction in clause 44 (5) on the power of the Assembly to do anything for a commercial purpose. While we support the role of regional assemblies as strategic bodies in areas where there is public support for them, we believe that operations are best carried out by other organisations to maintain a clear distinction between policy and delivery. The experience of Training and Enterprise Councils in the early 1990s was that the lack of such a distinction resulted in some TECs creating trading businesses in the training area which were given a favoured position in contracts in a way that detracted from their ability to plan strategically.

Clause 45

The AoC understands the need for the regional assemblies bill to create enabling powers for the Secretary of State to add functions as time passes by secondary legislation to expedite changes but we are concerned that this power could be used to add education and training powers without full consideration of the impact. The purposes and powers of assemblies set out in clause 43 create the potential for a large expansion of the remit of assemblies to cover many of the functions currently delegated to the Learning and Skills Council in the Learning and Skills Act 2000. Clause 45 appears to make it possible for the Secretary of State to transfer various functions in adult learning and skills to regional assemblies statutory instrument. This is not, of itself undesirable but consideration would need to be given to the following issues:

- the impact that such a transfer would have on other Learning and Skills Council functions in the same region, for example their duties and responsibilities with respect to the education and training of 16 to 19 year olds.
- the impact that such a transfer would have on adult learning and skills in other regions. A particular issue would be the impact on colleges in neighbouring regions

where people travel across boundaries but also where colleges are dealing with national companies or national specialities. The transfer of functions to a regional assembly could make funding and planning arrangements more complicated and less effective.

- the transfer issues in terms of budgets, assets and liabilities which could complicate such a transfer, particularly if a transfer took place at a different time from the end of the LSC financial year (31st March) or the end of the college financial year (31st July). A transfer which was financially favourable to the regional assembly obtaining more functions would disadvantage other regions.
- future arrangements to ensure that adult learning and skills are planned in a coherent and consistent way across England.

In the view of AoC it is not sufficient for these matters to be actioned simply through the mechanism of a statutory instrument. We believe an extensive process of examination of the implications would be essential, including full consultation with the learning and skills sector, with implementation through primary legislation.

Clause 46

The AoC have the same comments about additional duties that the bill creates as about additional functions.

Clause 119

AoC believes it will be desirable for any changes to the appointment process to be determined only after the investigations and consultation described above. Were the regional assemblies to be given a role in the appointment of local LSC board members in place of the Secretary of State, we believe that the Secretary of State's guidance should set clear limits on the categories of appointment to ensure that local LSCs had appropriate knowledge in areas which fall outside the assembly remit, for example 14-19 education, and to maintain consistency of approach across the country as a whole.

Clause 120

The AoC supports this clause

Clause 121

The AoC supports this clause

October 2004

Reports from the ODPM Committee since 2003

The following reports have been produced by the Committee since 2003. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2004-05

First Report	The Draft Regional Assemblies Bill	HC 62-I
Second Report	Annual Report to the Liaison Committee	HC 149
Third Report	Homelessness	HC 61-I (CM 6490)
Fourth Report	ODPM Annual Report and Accounts	HC 58

Session 2003-04

First Report	ODPM Annual Report and Accounts 2003	HC 102-I (CM 6141)
Second Report	Annual Report to the Liaison Committee	HC 221
Third Report	The Fire Service	HC 43-I (CM 6154)
Fourth Report	Coalfield Communities	HC 44-I (CM 6265)
Fifth Report	Decent Homes	HC 46-I (CM 6266)
Sixth Report	Social Cohesion	HC 45-I (CM 6284)
Seventh Report	Postal Voting	HC 400-I (HC 973)
Eight Report	The Role and Effectiveness of the Housing Corporation	HC 401-I (CM 6351)
Ninth Report	Local Government Revenue	HC 402-I (CM 6328)
Tenth Report	Supporting Vulnerable and Older People: The Supporting People Programme	HC 504-I (CM 6348)
Eleventh Report	The Role of Historic Buildings in Urban Regeneration	HC 47-I (CM 6420)
Twelfth Report	Draft Planning Policy Statement 6: Planning for Town Centres	HC 952
Thirteenth Report	Gypsy and Traveller Sites	HC 633-I

