



House of Commons
Public Administration
Select Committee

Legislative and Regulatory Reform Bill

Third Report of Session 2005–06

Report and an Appendix, together with formal minutes

*Ordered by The House of Commons
to be printed 20 April 2006*

HC 1033
Published on 25 April 2006
by authority of the House of Commons
London: The Stationery Office Limited
£6.50

The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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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 <http://www.parliament.uk/pasc>.

Committee staff

The current staff of the Committee are Eve Samson (Clerk), Clive Porro (Second Clerk), Lucinda Maer (Committee Specialist), Phil Jones (Committee Assistant), Sue Holt (Secretary) and Louise Glen (Senior Office Clerk).

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1 Introduction

1. The Legislative and Regulatory Reform Bill was presented on 11 January 2006.¹ It had been preceded by a consultation document, which had proposed a far more limited reform of the Regulatory Reform Act 2001 than has in fact emerged.² Even at that stage the responsible committees considered that the Government's proposals were highly significant. The Regulatory Reform Committee and the Procedure Committee both made it clear they would scrutinise the matter, and the Regulatory Reform Committee pressed for pre-legislative scrutiny of the forthcoming Bill. Since this was not available, the Committee ensured that its report was produced before Second Reading.³ Similarly, the Procedure Committee has produced its report in time to be available before the Bill is considered by the House as a whole.⁴

2. We too have an interest in the Bill. The Minister in charge, Mr Jim Murphy MP, is the Parliamentary Under-Secretary of State for the Cabinet Office, over which we keep a watching brief. We have long been concerned with the balance of power between state and citizen, and between government and legislature.⁵ This Bill, as our sister committees have said, is of major constitutional significance. It will inevitably affect that balance. Given the concerns expressed by many of our colleagues, and the cogent criticisms from the Regulatory Reform Committee, we had expected that significant changes would be made in Committee. In fact, although the Government has given several undertakings which we welcome, the major amendments will now need to be made at Report stage, the last opportunity Members have to consider the detail of the Bill. Given that this is the situation, we thought it timely to put our concerns on record, and to reinforce the work already done by other committees. Their recommendations would do a great deal to improve this legislation.

3. We will not attempt to give a detailed history of the measure, or a close analysis of its provisions, as that has already been done by our colleagues. But we need to explain why we think the Bill is, as they have said, "of major constitutional significance". As currently drafted, the Bill gives ministers a wide ranging power to "reform legislation" or implement recommendations of one or more of the United Kingdom Law Commissions (with or without changes) by order, and to propose the degree of Parliamentary scrutiny which is to be given to that order.

4. There are some restrictions on these powers, in that the Minister must consider that the preconditions in the Bill are met. The powers cannot be used to impose or increase taxation, to make new provision allowing forcible entry or compelling the giving of

1 Bill 111 (2005-06)

2 A Bill for Better Regulation: Consultation Document

3 Regulatory Reform Committee, First Special Report of Session 2005-06, *Legislative and Regulatory Reform Bill*, HC 878

4 Procedure Committee, First Report of Session 2005-06, *Legislative and Regulatory Reform Bill*, HC 894

5 The Committee reports regularly on Ministerial Accountability and Parliamentary Questions. We have also considered the use of the royal prerogative by the Executive (Fourth Report of Session 2003-04, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, HC 422).

evidence, or to impose penalties heavier than those specified in the Bill. This limit on penalties does not apply to orders which implement Law Commission recommendations.

5. The Government has said that the sweeping powers in the Legislative and Regulatory Reform Bill will be used to:

provide a more proportionate way of delivering better regulation reforms to legislation. It will help to promote a real change in the culture of regulation and inspection and enable the implementation of valuable and non-contentious Law Commission proposals.⁶

Those aims appear to be universally supported; and we also commend them. For that reason, second reading of this Bill was approved without division. The argument is over the proportionality of the legislation to those ends.

6. The Regulatory Reform Act 2001 provides that its procedures can be used to reform law which imposes burdens. There is nothing on the face of this Bill to limit its use to the stated aims set out by the Government. The Government rests its claims that the Bill is proportionate on two factors: the safeguards contained in preconditions set down by Clause 3, and the Government's own undertakings not to use the powers to implement highly controversial proposals.

7. As has been widely noted, it will be hard to sustain a legal case that a Minister has misused his powers by reference to the preconditions in Clause 3. They will be justiciable, but the barrier will only be that the Minister is acting within the range of what might be reasonable in considering that the preconditions have been met. In any event, relying on recourse to the courts to ensure that powers granted by the Bill are used as expected is itself problematic. Parliament is the legislature of this country, and should ensure that it has the powers and processes needed to scrutinise primary or secondary legislation adequately. Judicial review will always be needed as an additional safeguard, in case a defective instrument slips through our procedures for scrutinising secondary legislation, but the primary task must be to ensure that the powers on the face of this Bill are proportionate to the Government's aims, and the procedures for scrutinising orders brought forward using those powers are proportionate to the constitutional importance of what is proposed.

8. The Government has rested much of its case on repeated undertakings that the power will be used to further its deregulatory policies, and will not be used in unexpected or controversial ways. Whitehall has a liking for such undertakings and in fact records them carefully and takes them seriously. The undertakings given during the passage of the Regulatory Reform Act 2001 have not, so far, been breached. But Parliament has no means of enforcing those undertakings. **We are not satisfied by the emphasis on Government undertakings as a means of limiting the use of powers given by the Bill. Over the long term, it is all too easy for absolute undertakings to be broken, first because circumstances are exceptional, then because they are unusual, and finally because the undertaking itself has become obsolete.** There are similar disadvantages to relying too much on Parliamentary procedure—for example, all prayers against negative statutory instruments used to be debated on the Floor of the House; but it then became routine for

6 HC Deb, 9 February 2006, col 1048

them to be referred to Committee (although Members could force debate on to the Floor of the House). Last session, 660 negative statutory instruments were laid—8 of the 13 prayers against them were debated in time for the House to take effective action.

9. The Regulatory Reform Committee and the Procedure Committee have provided comprehensive surveys of the provisions of the Bill, and of the procedures which might be needed to ensure those provisions are operated in a balanced way. They have put forward many valuable recommendations, which we believe the Government and the House should consider extremely carefully. This report concentrates on what we consider to be the key defects in the Bill, and the absolute minimum that needs to be done to make it proportionate to its aims.

2 Changes to the Bill

A Parliamentary veto

10. The Regulatory Reform Committee recommended that the Bill should be amended to provide scope for an effective veto on the use of the powers in the Act. **We are delighted that, during the Committee stage of the Bill, the Minister announced that he would bring forward a Parliamentary veto on the use of the procedures in the Legislative and Regulatory Reform Act.**

I can give a commitment to the Committee today, ..., to give the power of veto to the relevant Committees here and in another place, and to the Committees charged by the House of Commons as being the appropriate Committees to consider orders. The Bill should be amended to include that veto, which is a significant change from the 2001 Act. It is an appropriate change as we seek to extend our better regulation agenda.⁷

As the Minister himself noted, “to get the veto provision correct will take a great deal of work and thorough consideration”.⁸ We will look most carefully at any amendments the Government brings forward. Moreover, we draw attention to the Procedure Committee’s recommendation that there should be a power of veto which could be exercised outside the Committee as well as within it, although the mechanism by which the House of Commons exercises the veto (as opposed to the addition of the veto itself) should rest on House of Commons procedure, rather than be written on the face of the Bill.

Determination of procedure

11. The Government wishes to have a mechanism whereby minor and non-controversial reforms are not subject to the lengthy super-affirmative procedures. We understand its desire for flexibility, although we note that none of the major delays in the Regulatory Reform process since 2001 have been caused by the parliamentary process.⁹ As currently drafted, the Bill gives the Minister power to recommend the procedure which is to be

⁷ Stg Co Deb, Standing Committee A, Fourth Sitting, 2 March 2006, col 141

⁸ *Ibid.*, col 142

⁹ See Regulatory Reform Committee, *Legislative and Regulatory Reform Bill*, HC(05-06)878, Table 2, para 26

followed. This recommendation will have effect, unless within 21 days either House of Parliament requires a different procedure to apply. We welcome the fact that the Government has undertaken to consider extending the period for consideration from 21 days to 30 days. Yet the extension of the preliminary period for consideration to 30 days is the most minimal of the Regulatory Reform Committee's proposals for change. The Procedure Committee has recommended that Clause 13 should be:

replaced with the straightforward provision that all draft orders would be subject to the super-affirmative procedure unless either (a) both Houses recommended that either the affirmative or the negative procedure should apply; or (b) either House determined that the draft order should not be proceeded with.¹⁰

We support this approach.

Limitations on the use of the powers in the Bill

12. There have been a number of suggestions about ways in which the powers given by the Bill might be restricted, since the current concept of reforming burdens no longer applies. The Regulatory Reform Committee proposed that certain subject matter should be reserved from the Bill. Amendments were moved in committee to this end. The Standing Committee also considered an amendment which would exempt particular enactments from modification using the Legislative and Regulatory Reform procedures. In correspondence with the Leader of the House, our Chairman suggested that the Bill should be modified so that legislation could only be reformed in a way that was consonant with its original purpose.

13. On 12 April the Minister wrote to Mr Andrew Miller MP, the Chairman of the Regulatory Reform Committee, saying

I am now looking into making the power more clearly focused on delivering better regulation objectives. But I am determined that the power is framed in such a way that we still are able to deliver real change, including the initiatives that departments will be proposing in their forthcoming simplification plans and the benefits of our ambitious admin burdens reduction programme.¹¹

The commitment is extremely welcome, but the Minister's letter gives no indication of the nature or extent of the amendments the Government will bring forward, and it is clear that the Government still seeks wide powers. We will not be able to judge the adequacy of any additional safeguards until we see precisely what is proposed.

14. It is not clear whether the Government will take a general approach in its amendments, perhaps by introducing something like the earlier concept of a burden, or whether it will exclude certain Acts or subject matter from the Bill. The Government has consistently argued that putting specific restrictions on the uses of its powers might mean that it was prevented from bringing forward useful and uncontroversial reforms simply because they touched reserved matters or enactments. We recognise that this is the case. Nonetheless,

10 Procedure Committee, *Legislative and Regulatory Reform Bill*, Session 2005-06, para 37

11 http://www.cabinetoffice.gov.uk/regulation/documents/bill/letter_am.pdf

the Government seeks an unprecedented power to amend almost any legislation in almost any way. This is disproportionate to its stated aims. If Government wants broad powers, it must accept that some matters should be off-limits.

15. The Minister was against a prescriptive list because it would restrict “the ability to reduce bureaucracy, form filling and information sharing”.¹² However, there are a large number of Acts, such as the Parliament Act, which contain important constitutional principles, and which impose no burden on business. We cannot see why they should not be excluded entirely from the provisions of the Bill. The Minister himself said:

I do not accept that the Bill could be used to reform itself, for all sorts of reasons. Not least of those are the Government’s assurance in 2001, which has been generally accepted, that they should not introduce highly controversial proposals, and the Select Committees’ power to reject any proposals by order. Those are important powers that would protect Parliament from such a suggestion.¹³

If that is the case, then we can see no argument for not putting the restriction on the face of the Bill.

16. The Bill needs to be amended so that it contains real restrictions on the Government’s power. Valuable suggestions about reserving certain subject matter or certain enactments have already been made. Minimally, the Bill needs to be amended to ensure that the powers it contains cannot be used to amend the Legislative and Regulatory Reform Act itself, or any enactment which deals in substance with either House of Parliament.

17. The Government rejected an amendment moved in committee which would have had the effect of limiting the orders which could be made under the Bill by introducing “a notion of purpose or scope which is derived from the legislation that the order would purport to change. No order for any purpose substantially different from the purpose of the legislation that is being changed would be allowed”.¹⁴ The Minister’s reason for rejecting this was not entirely clear:

We must reduce bureaucracy, and an ability to do that to all sorts of different Acts which themselves are highly controversial—the Government do not propose to introduce amendments to the policy but to amend the bureaucracy attached to them—is the right way to progress.¹⁵

The position was clarified by the Leader of the House, who wrote to our Chairman that:

Amendment 46 provided that orders could not reform legislation for a purpose substantially different to that for which the original legislation was passed. Jim Murphy resisted this on the basis that such a definition could prevent the

12 Stg Co Deb Standing Committee A, 2 March 2006, col 129

13 *Ibid.*

14 *Ibid.*, col 113

15 *Ibid.*, col 129

Government from delivering its wider better regulation agenda in a similar way that the narrow definition of legal burden in the 2001 Act has done.¹⁶

The acceptance of a Parliamentary veto may perhaps make it unnecessary for the Bill itself to specify that reforms should be compatible with the underlying legislation, but we trust that any committee scrutinising such orders will reject those which make radical changes to the policy underlying existing law.

Law Commission proposals

18. Throughout proceedings on this Bill, Members have expressed concern about the breadth of the powers to implement Law Commission proposals. Orders to implement Law Commission proposals can make changes to common law (possibly in a way which is not in accordance with recommendations from the Law Commission), and are not subject to limits on the penalties they can impose. The Procedure Committee has already drawn attention to the weakness of the Government's argument that there is not sufficient time to implement Law Commission recommendations through the normal legislative process, given that the House has expedited procedures for such bills. **We welcome the fact that the Minister has undertaken to think again about the absence of limits on penalties when Law Commission recommendations are implemented. It is Parliament's responsibility to make new law, and significant proposals for such law should be made as primary legislation, however eminent and expert the body which recommends them.**

3 Conclusion

19. The Legislative and Regulatory Reform Bill itself provides a striking example of the advantages of the existing legislative procedure. The underlying intentions of the Bill are widely, even universally, supported. Even so, those concerned within Parliament saw its significance from the outset. Members of the Liaison Committee made informal approaches to the Leader of the House; and many Members raised serious concerns at second reading. Parliament's relevant committees have reported in robust terms. Outside Parliament, it has taken some time for commentators to realise the significance of this measure, although it is now attracting a great deal of attention. The orderly staging of the legislative process has given time for Members to raise concerns properly, and to engage with the Government. The Report stage will allow individual Members to put forward amendments. The Bill will be subject to further scrutiny in the House of Lords, when the debate is likely to be developed further.

20. We accept that the current legislative process can be too cumbersome for uncontroversial improvements and simplifications of existing law. That is why we support this Bill. But there has been too much emphasis on reducing the relatively light constraints of Parliamentary procedures, and too little on tackling the culture which gives politicians and civil servants little incentive to put effort into preparing a Regulatory Reform Order, or bringing forward a Law Commission Bill. It is troubling that it is believed to be easier to bring forward changes to the way in which Parliament makes law, than it is to tackle

16 See Appendix

blockages within Whitehall. **As currently drafted, the Legislative and Regulatory Reform Bill gives the Government powers which are entirely disproportionate to its stated aims. The Government has undertaken to amend it, and it must do so, to ensure that by the time it leaves this House it provides adequate safeguards against the misuse of the order making powers it contains.**

Conclusions and recommendations

1. The Government has said that the sweeping powers in the Legislative and Regulatory Reform Bill will be used to “provide a more proportionate way of delivering better regulation reforms to legislation. It will help to promote a real change in the culture of regulation and inspection and enable the implementation of valuable and non-contentious Law Commission proposals”. Those aims appear to be universally supported; and we also commend them. (Paragraph 5)
2. We are not satisfied by the emphasis on Government undertakings as a means of limiting the use of powers given by the Bill. Over the long term, it is all too easy for absolute undertakings to be broken, first because circumstances are exceptional, then because they are unusual, and finally because the undertaking itself has become obsolete. (Paragraph 8)
3. We are delighted that, during the Committee stage of the Bill, the Minister announced that he would bring forward a Parliamentary veto on the use of the procedures in the Legislative and Regulatory Reform Act. (Paragraph 10)
4. As the Minister himself noted, “to get the veto provision correct will take a great deal of work and thorough consideration”. We will look most carefully at any amendments the Government brings forward. Moreover, we draw attention to the Procedure Committee’s recommendation that there should be a power of veto which could be exercised outside the Committee as well as within it. (Paragraph 10)
5. The Bill needs to be amended so that it contains real restrictions on the Government’s power. Valuable suggestions about reserving certain subject matter or certain enactments have already been made. Minimally, the Bill needs to be amended to ensure that the powers it contains cannot be used to amend the Legislative and Regulatory Reform Act itself, or any enactment which deals in substance with either House of Parliament. (Paragraph 16)
6. The acceptance of a Parliamentary veto may perhaps make it unnecessary for the Bill itself to specify that reforms should be compatible with the underlying legislation, but we trust that any committee scrutinising such orders will reject those which make radical changes to the policy underlying existing law. (Paragraph 17)
7. We welcome the fact that the Minister has undertaken to think again about the absence of limits on penalties when Law Commission recommendations are implemented. It is Parliament’s responsibility to make new law, and significant proposals for such law should be made as primary legislation, however eminent and expert the body which recommends them. (Paragraph 18)
8. As currently drafted, the Legislative and Regulatory Reform Bill gives the Government powers which are entirely disproportionate to its stated aims. The Government has undertaken to amend it, and it must do so, to ensure that by the time it leaves this House it provides adequate safeguards against the misuse of the order making powers it contains. (Paragraph 20)

Formal Minutes

Thursday 20 April 2006

Members present:

Dr Tony Wright, in the Chair

Mr David Burrowes

Paul Flynn

Kelvin Hopkins

Mr Ian Liddell-Grainger

Julie Morgan

Mr Gordon Prentice

Draft Report [*Legislative and Regulatory Reform Bill*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 20 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Several Papers were ordered to be appended to the Report.

Ordered, That the Appendix to the Report be reported to the House.

[Adjourned till Thursday 27 April at 9.45 a.m.]

Reports from the Public Administration Select Committee

The following reports have been produced during the current session.

Session 2005–06

First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577
Second Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020

Appendix: Correspondence relating to the Bill

Letter to Rt Hon Alan Williams MP, Chairman of the Liaison Committee, from Dr Tony Wright, Chairman, Public Administration Committee, House of Commons, dated 18 January 2006, with copies to Rt Hon Greg Knight MP, Chairman of the Procedure Committee and Andrew Miller MP, Chairman of the Regulatory Reform Committee

As you will remember, last November Andrew Miller drew the Liaison Committee's attention to the importance of legislation to amend the Regulatory Reform Act 2001, which would have implications for almost all select committees. As a result of his intervention, you wrote to the Leader of the House on our behalf, emphasising the importance of the Government's proposals, and urging that the Regulatory Reform Committee should be given time to scrutinise the Bill between its introduction and second reading.

The Government statements on the Bill emphasise the potential to use these powers to deregulate, and to simplify the law, and this would indeed be welcome, but I am concerned that the constitutional importance of the measure may have been overlooked. In my opinion, the Legislative and Regulatory Reform Bill, introduced on 11 January, goes further than the proposals in the consultation paper. Limitations suggested there have been removed, and replaced with far lighter restrictions on the use of the powers in the Bill.

Whereas primary legislation gives individual Members an opportunity to put forward amendments to part of a measure which they may feel needs improvement, if changes to the law were put forward using the procedures in this Bill, individual Members would be faced with a choice between accepting a measure in its entirety or rejecting it, rather than seeking to amend particular parts of the measure. It is also possible that the time available for them to intervene would be much shortened. There would be no certainty about how they should intervene, since it would be for the Minister putting forward a measure to suggest the appropriate Parliamentary procedure.

While I understand the desire for a quicker and simpler way of bringing forward law reform proposals, and for ensuring that the level of scrutiny is appropriate, we must make sure that Parliamentary scrutiny remains adequate. I am concerned that the Regulatory Reform Committee, or any other committee charged with reporting on a proposal, would only have 21 days in which to decide whether the Government's proposals for the procedure to be followed were proportionate, and in which, presumably, to undertake at least first stage scrutiny of the proposals. It would only have longer to suggest amendments if it recommended super affirmative procedure was followed. Its ability to consult with departmental committees, which are likely to have a strong view on many orders, will be severely limited. It will be extremely difficult to consult outside Parliament. A recommendation that it was not appropriate to use delegated legislation to implement a particular proposal would have no automatic effect.

Although the Bill does contain some restrictions on ministerial powers to reform legislation, these are far fewer than in the current legislation, or than I had expected from

the consultation document. The preconditions in Clause 3 are not absolute tests, but merely requirements that the Minister making the order considers that the conditions in subsection 3(2) have been met. As such, they are subject to legal control only by standard judicial review tests; on a challenge the courts will address the question: are the opinions the Minister has formed within the range of opinions that a Minister, acting reasonably, might form? If the answer is 'yes', the preconditions have been validly met.

In contrast, the powers are wide. Subject to pretty limited exceptions, orders to reform legislation can replace primary legislation in any way that an Act of Parliament might. In particular -

- Orders implementing proposals from a Law Commission could make changes to common law, whether or not the Law Commission proposals were implemented without change; the extent to which other law reform orders could do this is not clear.
- Orders could create new offences; and although new offences originating from government would have a limit set on their penalties, these restrictions would not apply to orders implementing Law Commission proposals, where penalties would be unlimited.
- Orders could be used to confer subordinate lawmaking powers; if such powers were given to Ministers and were novel they would have to be exercisable by affirmative or negative statutory instrument; that limit is however only applicable to orders bestowing powers on Ministers. It is understandable that there may be a need to give councils and others rights to make bylaws without going through Parliament, but there appears to be no express restriction on the conferring of a power to by-pass Parliament on any official, or for that matter, any trade organisation or private citizen.

Insofar as orders amend or repeal primary legislation or apply it to other circumstances (with or without modifications), the courts will not be able to strike them down if they breach the European Convention on Human Rights, as they can other secondary legislation; this limitation would apply even where a law reform order had been subject to negative procedure. The most the courts could do would be to declare the legislation incompatible with the Human Rights Act, and leave it to the Government to bring forward amendments.

Where the power is used to reform the law, the proposals would certainly make changes simpler and save Parliamentary time, but I think the provisions for scrutiny will need to be considered extremely carefully.

I believe the proposals offer significant advantages where the intent is to restate the law in a way which is more readily understood; Parliament has accelerated procedures for Consolidation Bills, but unlike law reform orders, such bills cannot include all sources of law, such as regulations and even codes of practice. The question here is whether Whitehall has the resources to produce such user-friendly restatements of the law, which would require a great deal of legal expertise to compile.

I can also see potential advantages in the using the procedure for Law Commission Bills, although I am not convinced that the House would wish to impose significant penalties without proper scrutiny simply because the proposals emanated from a Law Commission.

This is a matter on which the Liaison Committee may wish to express a collective view. For example, is it appropriate for us to request that the Committee stage of at least Part 1 of the Bill be taken on the Floor of the House, given its constitutional importance? In the short term, I am copying this letter to the Chairmen of the Regulatory Reform and Procedure Committees, who have the most immediate interest in the Bill.

Letter to Rt Hon Geoffrey Hoon MP, Leader of the House, from Dr Tony Wright MP, Chairman, Public Administration Committee, House of Commons, dated 6 February 2006

Following our meeting last week, I thought it might be helpful if I sketched out some of the changes which I believe would make it easier for us to achieve the admirable ends of the Legislative and Regulatory Reform Bill by making the detail more palatable.

I have briefly looked at the report from the Regulatory Reform Committee, and I support the thrust of its recommendations. Doubtless, your officials will be considering how to draft amendments to meet that Committee's detailed concerns: for me, the key issues are the weakness of the limitations on the powers in the Bill, the lack of any Parliamentary veto over the use of the powers, the time allowed for scrutiny of government proposals and the proposition that significant penalties can be imposed on citizens by statutory instrument simply because they have been recommended by a Law Commission. I also am aware that the Procedure Committee is currently undertaking an inquiry and expect that they will have further comments on the acceptability of the provisions relating to Parliamentary procedure.

It seems to me that amendments along the following lines would go a great way to reduce anxiety over this Bill.

Clause 1, line 9, at end insert

“() an order may reform legislation only in a way that is compatible with and proportionate to the policy objective of the legislation it reforms”

(The absence of real limits on coverage is clearly a significant concern. The Regulatory Reform Committee has identified that issue and suggested a list of off-limits areas as a possible solution. This amendment aims to deal with the same issue by introducing an objective general test which might enable any list of off-limits areas to be reduced in length.)

Clause 6, page 4, leave out lines 17 and 18

(This would remove the provision allowing significant penalties to be imposed if recommended by a Law Commission)

Clause 13 et seq—replace the 21 and 40 day periods with 60 day periods and introduce a provision for annulment of negative instruments in the 40 days after the period ends as a consequence.

New clause after clause 12

Requirement for Primary Legislation

(1) If within 60 days of the laying of a draft order under section 12 a committee of either House of Parliament charged with reporting on the draft order has reported that the subject matter or policy objectives of the order are such that primary legislation is appropriate, the Minister shall withdraw the draft order.

(2) If a report under paragraph (1) is made, no draft order making similar provision may be laid for a period of two years from the day such a report is laid before Parliament.

(3) If no report under paragraph (1) is made, sections 13 to 16 shall apply.

I am very grateful for the constructive nature of our discussions last week; I hope you will take these suggestions in that spirit.

Letter from Geoff Hoon, Leader of the House, to Dr Tony Wright MP, Chairman, Public Administration Committee, House of Commons, dated 13 March 2006

LEGISLATIVE AND REGULATORY REFORM BILL

Thank you for your letter of 6 February concerning the proposed changes you believe would improve the Legislative and Regulatory Reform Bill.

As you will be aware, Committee stage was concluded on 9 March and I thought I would reply to your letter reflecting the debate in Standing Committee.

A number of amendments were tabled during Committee stage that sought similar changes to the Bill as you suggest in your letter. I will deal in turn with each of the points you have raised.

Concerning Clause 1, amendments were proposed that would identify areas that should not be able to be reformed by order. Amendment 46 provided that orders could not reform legislation for a purpose substantially different to that for which the original legislation was passed. Jim Murphy resisted this on the basis that such a definition could prevent the Government from delivering its wider better regulation agenda in a similar way that the narrow definition of legal burden in the 2001 Act has done.

In Committee, Jim said that the breadth of the power in itself is not an indication of its intended use. As well as the key safeguards laid out in Clause 3, the topic specific restrictions in Clauses 4 to 7, and the provision that orders will be subject to wide-ranging public consultation, he also gave a Government undertaking that highly controversial measures would not be proposed by order.

Clauses 10 to 16 concern the rigorous Parliamentary scrutiny that will be required for order-making powers. Regarding your suggestion to replace the 21 and 40 day periods in Clause 13 et seq with 60 day periods, Jim maintains that the procedures contained in the Bill are intended to provide an effective and, above all, workable mechanism for scrutinising orders based on the nature and impact of the reforms. In light of the views expressed both in the Regulatory Reform Committee's report and the amendments tabled

during the Committee stage, the Government will give careful consideration to extending the period of determination for the procedure from 21 to 30 days.

Following discussion at Committee stage, Jim has undertaken to consider placing on the face of the Bill a provision that Parliament shall retain a veto over every proposed order. I believe this addresses your request for a new clause after Clause 12. It will also ensure a balance between appropriate safeguards for parliamentary scrutiny and the necessary flexibility of the power to deliver fully the Government's better regulation agenda.

Amendments were tabled at Committee stage in line with your suggestion to change Clause 6. Jim believes Law Commission recommendations that would impose criminal penalties above the levels generally imposed by Clause 6 and suitable for implementation by order will be rare because they would be controversial. Accepting the amendment would mean that some well considered and worthwhile Law Commission recommendations could only be implemented by primary legislation. Despite these reservations, Jim has agreed to reflect on removing the provision.

Letter to Rt Hon Geoffrey Hoon MP, Leader of the House, from Dr Tony Wright MP, Chairman of the Public Administration Committee, dated 15 March 2006, copied to Jim Murphy MP

Thank you for your letter of 13th March. I have been following proceedings on the Legislative and Regulatory Reform Bill, and I welcome the undertaking to give the responsible Committees of this House and of the Lords a veto on the use of the powers to reform the law by statutory instrument. As Jim Murphy himself said in committee, "to get the veto provision correct will take a great deal of work and thorough consideration"; I am sure that members of my committee, like myself, will be looking closely at the amendments the Government produces, to ensure that they are satisfactory. I also commend the undertaking that the Government will consider extending the period for determining which procedure should be used to scrutinise these instruments from 21 to 30 days, although I note that this is the least significant of the Regulatory Reform Committee's proposals for change.

I am, however, disappointed that the Government has resisted all proposals to limit the way in which the powers can be used, either by specifying that the aims of the reform should be consonant with those of the underlying legislation, or by exempting particular subjects, or Acts of Parliament from the provisions of Part I, and its reservations about excluding Law Commission recommendations which would impose criminal penalties above the levels generally imposed by Clause 6.

I appreciate the argument that exclusions might mean that a reform could not be made under the powers given by the Bill because it made minor changes to exempted subjects, or legislation, but it is a question of balance. There may be a few worthwhile reforms which could not be brought forward using the powers in the Bill if these exclusions were included, but those powers fundamentally change the relationship between Parliament and the Executive.

If Parliament is willing to give the Government new powers to reform legislation, then the Government may have to accept that those powers should be limited by statute, not by an

undertaking that the powers will not be used for “highly controversial” measures. Such undertakings may well be respected for a long time, but they are not part of the law of the land. At the very least, it is hard to see why the Bill should not be amended to prevent its own subsequent amendment through the regulatory reform process, and there are other obvious candidates for exclusion, such as the Parliament Acts.

Similarly, although it is theoretically possible that there could be a Law Commission proposal which was not controversial, but which imposed heavy penalties, as the Government itself admits, such cases are likely to be rare. If they have to come forward through primary legislation, so be it.

I look forward to seeing the Government’s proposals for amendment to the Bill, which I am sure my committee will scrutinise very closely.