



HOUSE OF LORDS

Select Committee on the Constitution

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Rt Hon. Jacob Rees-Mogg MP
Lord President of the Council and
Leader of the House of Commons
House of Commons
SW1A 0AA

9 November 2020

Dear Lord President,

Parliamentary scrutiny of bills and delegated powers

Thank you for your response of 19 October to the joint letter from the Constitution Committee, Delegated Powers and Regulatory Reform Committee and Secondary Legislation Scrutiny Committee. I am replying on behalf of the Constitution Committee, which has serious concerns about the quality of legislation presented to Parliament.

We welcome your confirmation that “bills with substantial powers ... should not be a tool to cover imperfect policy development” and that the measures taken in these exceptional times “do not necessarily provide a model of how Parliament would like to see legislation brought forward.” We wholeheartedly agree.

You make a personal commitment to take account of the points raised in our original letter, which is welcome. We would be grateful to know how you see the role and capacity of the Parliamentary Business and Legislation Committee in assisting you with this task. Given the size of the legislative programme, and the welcome addition of secondary legislation to the PBL’s remit, is there a case for providing more time and resources in order to improve the quality of legislation?

We think your suggestion of “issuing communications to Secretaries of State ... encouraging them to minimise the use of delegated powers where possible and to ensure sufficient time is allowed at the outset for the development of policy” would be valuable. As you will be aware, the Cabinet Manual is in the process of being revised. Would you consider adding material to the next version of the Manual to cover this aspect of the relationship between Parliament and Government?

As set out in our original joint letter, the issues raised with delegated powers are not new. In particular, the DPRRC explored some of these problems in a report on delegated powers memoranda in 2014 (HL Paper 39). In the Government’s response of 13 October 2014 (published as HL Paper 56) the then Treasury Solicitor and then First Parliamentary Counsel wrote to the DPRRC with a list of specific actions the Government would take, including:

- revised guidance for departmental legal teams and Parliamentary Counsel on memoranda;
- monitoring of DPRRC reports by senior lawyers;

- weekly reports to the Treasury Solicitor about issues raised by DPRRC reports;
- training for lawyers on the quality of delegated powers memoranda;
- sharing of good practice across departmental legal teams and support from Parliamentary Counsel.

We would be grateful to know whether these measures remain part of the Government's approach to delegated powers memoranda and what specific measures along similar lines might assist Government departments in not resorting to delegated powers in the first instance.

We would also be grateful to know how you see the role of Parliamentary Counsel in the drafting of Henry VIII powers. Would you consider issuing instructions to Parliamentary Counsel to resist attempts by Government departments to include wide-ranging Henry VIII powers in bills?

Given that many recent bills have not been approached in the way that you suggest would be appropriate in normal circumstances, it is important that we continue to monitor the Government's actions in respect of delegated powers and to engage with you on these important issues.

Yours sincerely,



Baroness Taylor of Bolton
Chair of the Constitution Committee

cc. Rt Hon. Michael Gove MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office

Rt Hon. Lord Blencathra, Chair, Delegated Powers and Regulatory Reform Committee

Lord Hodgson of Astley Abbotts, Chair, Secondary Legislation Scrutiny Committee