



10 November 2020

The Rt Hon. Jacob Rees-Mogg MP  
Lord President of the Council and  
Leader of the House of Commons  
By email

Dear Lord President

## **Skeleton bills and skeleton provision**

Thank you for your letter of 19 October in response to our letter of 25 September raising concerns about the use of skeleton bills and bills containing skeleton provision. We welcome your acknowledgment that our letter raises important matters and also your recognition of the role of our committees in the effective scrutiny of legislation.

This letter is from the Secondary Legislation Scrutiny Committee and the Delegated Powers and Regulatory Reform Committee and focuses on the remits of those committees. The Constitution Committee, with its wider remit, has replied separately.

### *Particular demands of the pandemic*

No one could dissent from the view that we are living in exceptional times which have given rise to a need for exceptional powers. We agree with you, however, that a legislative approach necessitated by crisis does not “provide a model example of how Parliament would like to see legislation brought forward”. This is a helpful statement of the Government’s view. Effective scrutiny and legislative certainty are at the heart of good governance and not simply a preference of parliamentarians.

### *Communications across government*

We welcome your acknowledgment that the delegation of substantial powers should not be “a tool to cover imperfect policy development” and that such delegations “hinder rather than help” the Government’s ability to explain their policy to Parliament and the public. We trust that, having considered the matter, you will now communicate to Secretaries of State the need to avoid skeleton bills and bills with skeleton provision and to ensure sufficient time, in advance of the introduction of a bill, is available for full policy development. The Committees, and parliamentarians more generally, have, as you know, a keen interest in this matter and look forward to sight of the communication.

We also reiterate a point made in our earlier letter, as a means of reinforcing the intention of the communication, that the Government’s Guide to Making Legislation should be amended to include a clear statement that skeleton bills and skeleton provision should be avoided whenever possible and used only in exceptional circumstances where no other approach would be possible.

### *Temporary or permanent legislative change*

It is because much of the secondary legislation in recent months has been a response to the temporary exigencies of the pandemic that the Secondary Legislation Scrutiny Committee (SLSC) has been particularly concerned about the exercise of powers where their purpose has been to address the immediate crisis but where their effect is permanent.

We have in mind, for example, a group of statutory instruments on town and country planning (the Town and Country Planning (General Permitted Development)(England)(Amendment)( No. 2) Order (SI 2020/755) and related instruments) about which the SLSC said in its 25<sup>th</sup> Report of this session: “While the Committee notes the Government’s intention to support the economic recovery from the pandemic, the plans for further reform do raise the question whether it would have been more appropriate to take forward the significant and far-reaching changes made by these instruments in a future planning bill, enabling Parliament to scrutinise the changes more fully.”

Another example is the draft Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020 (and a related instrument), reported by the SLSC in its 21<sup>st</sup> Report. The Committee said: “... the policy changes made by the two Orders are potentially very significant. As with some earlier instruments, the Committee noted and regretted a mixture of provisions, some of which are short-term to deal with the impact of the pandemic and others which represent permanent changes. So, while there will be an opportunity to raise specific issues and concerns during the debate on these Orders, the House will only be able to scrutinise the Government’s overall approach properly when the [National Security and Investment] Bill is introduced into Parliament.”

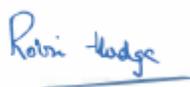
In addition to the points raised in our earlier letter, we would urge you to ensure that departments do not use the exceptional powers given to them by Parliament as an expedient in the context of the pandemic as a cloak for effecting longer term, post-pandemic changes which would more properly be included in primary legislation.

### *Justifying skeleton legislation*

Finally, we were pleased to see your undertaking that the Government must at all times fully justify the appropriateness of delegated powers. In communicating with departments, we would urge you to remind them of the fundamental importance of providing a thorough and convincing delegated powers memorandum and, in the event of skeleton provision, to set out in the memorandum the information requested in our earlier letter.

A copy of this letter is being sent to the Leader of the House of Lords, the Rt Hon. Baroness Evans of Bowes Park, the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, the Rt Hon. Michael Gove MP, and First Parliamentary Counsel, Elizabeth Gardiner CB QC.

Yours sincerely



**The Lord Hodgson of Astley  
Abbotts CBE**

*Chair of the Secondary Legislation Scrutiny  
Committee*



**The Rt Hon. the Lord Blencathra**

*Chair of the Delegated Powers and  
Regulatory Reform Committee*