Government Response to the Report of the Joint Committee on the Draft Deregulation Bill

Presented to Parliament
by the Minister for Government Policy and
the Minister without Portfolio
by Command of Her Majesty

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Any enquiries regarding this publication should be sent to us at Deregulation.Bill@cabinet-office.gsi.gov.uk.

ISBN: 9780101880824

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2620112 01/14 36777 19585

Printed on paper containing 75% recycled fibre content minimum

Introduction

1. The Government would like to thank the Joint Committee for undertaking pre-legislative scrutiny (PLS) of the Draft Deregulation Bill.

2. The Committee began with procedural matters, followed by chapters on the order-making power, the Growth Duty, Use of Land Provisions and other, wider concerns. The Government's response to the report follows the same format.

3. The Government is pleased to note that the Committee welcomed our efforts to reduce the burden on individuals, civil society, businesses and public sector organisations, and encouraged future Deregulation Bills.

4. This Bill is one part of the on-going Deregulation agenda. As the Committee noted, the Bill sits alongside the Red Tape Challenge and the One in Two Out rule (formerly One in One Out). The measures in the Bill are a mixture of Red Tape Challenge measures that needed primary (and some secondary) legislation and a number of other measures identified by departments that need primary legislation in order to lift a burden.

5. The Committee received the bulk of evidence on the order-making power, the Growth Duty, the Use of Land Provisions ('Rights of Way') and Clauses 1, 2, 3, 9, 28, 33 & schedule 14, 35, 40 and 47.

6. The Committee also raised questions on specific issues such as the potential reduction in parliamentary scrutiny, the deregulatory nature of the Bill and the evidence base behind certain clauses.

7. In terms of procedure, the Committee raised points about the length of time allowed for their inquiry and devolution issues.

<u>Procedure of the Committee</u>

8. On the length of the inquiry, the Committee's report says**:**

   Paragraph No. 7. "We take the view that, whilst the 12 week timetable may be regarded as a minimum starting point, a longer deadline should be agreed if, on a case by case basis, it is judged necessary in order to allow a committee to carry out its pre-legislative functions effectively. A deadline longer than the minimum would have been appropriate with regard to the draft Deregulation Bill given the range of issues covered by the draft Bill and the number of Government departments involved."

   Paragraph No. 8. "Given that it is the Government's intention that this should be a carry-over Bill and that, according to Mr Letwin, there is "plenty of time" to carry out further consultation if recommended by the Joint Committee, we question why a longer pre-legislative scrutiny inquiry period was not agreed."

9. The deadlines proposed for PLS by joint committees are considered on a case by case basis, and seek to balance the time required for scrutiny against that required to respond to Committees' recommendations and the requirements of the legislative programme as a whole. The Government recognises the breadth and complexity of this Bill and is grateful for the Committee's sensible approach taken to examining it in the time available. The deadline of five months, agreed by both Houses, is longer than that agreed for most joint committees and represents a reasonable timeframe for proper scrutiny of this Bill.

10. On devolution issues, the Committee's report says:

    Paragraph No. 14. We sought assurance from the Government that the correct procedures (as set out, for example, in the Sewel Agreement in the case of Scotland), in terms of liaising with the devolved administrations and agreeing Legislative Consent Motions where needed, were being followed. We were assured that they were.

11. We would like to reassure the Committee once again that we have taken full and appropriate consideration of devolution issues whilst drafting the Bill.

Order-making Power and Schedule 16

12. The Committee received a great deal of evidence about the order-making power, on which the Committee's report sets out a number of concerns and recommendations:

    Paragraph No. 67. "We therefore recommend that clauses 51 to 57 be removed from the draft Bill. Whilst we do not recommend the removal of Schedule 16, we recommend that the provisions in the Schedule be referred to the Law Commissions [the Law Commission for England and Wales, the Scottish Law Commission, and the Northern Ireland Law Commission] for confirmation, before the Committee stage of the Bill in the first House, that they are "no longer of practical use"."

13. The Government has carefully considered the views of those who provided evidence to the Committee in relation to the order-making power in clauses 51 to 57 and the Committee's recommendations.

14. Although we believe that an order-making power to disapply legislation that is no longer of practical use would be a useful additional tool for tidying up the statute book, we recognise that there is insufficient appetite for such a measure at this time. We therefore accept the Committee's recommendation to remove clauses 51 to 57 from the Bill.

15. We do not agree, however, that the provisions contained in Schedule 16 should be referred to the Law Commissions for confirmation that they are "no longer of practical use".

Schedule 16

16. We would emphasise that Governments frequently repeal unneeded legislation and that this is considered part of 'good housekeeping' of the statute book. They are also the types of 'housekeeping' changes which are regularly dealt with in Bills or orders. To refer the provisions in Schedule 16 to the Law Commissions for confirmation would be most unusual.

17. We disagree that Departments do not have the expertise to determine whether legislation is obsolete or know the importance of accuracy and giving consideration to saving, transitional or consequential provisions. An example of this type of consideration is seen in Part 1 of Schedule 5 to the Deregulation Bill which repeals the Deeds of Arrangement Act 1914 as part of a package of insolvency measures. Research by Government officials indicated that there was still one person who had a deed of arrangement under the 1914 Act, and so a decision was made to include a special saving provision in paragraph 3 of Schedule 5. No evidence has been submitted that any of the schedule 16 provisions are not obsolete.

18. We agree that some of the provisions in Schedule 16 are the types of repeal candidates that can be referred to the Law Commissions, although we would point out that many of the provisions in Schedule 16 are secondary legislation and that SLR work is confined to primary legislation.

The Law Commissions

Paragraph No. 58. "The Law Commissions' proposals for improvement with regard to producing more frequent and more responsive SLR Bills appear to us to answer the Government's reasons justifying the proposed order-making power, namely to allow departments to follow their own timeframes and to repeal legislation in areas of particular concern to them. We query, however, how this can be achieved given the current size of the Law Commissions' SLR teams. In principle, we think consideration should be given to an annual SLR Bill."

Paragraph No. 65. "The skills, research and consultation needed to ensure that Parliament, external organisations and the public can be satisfied that a piece of legislation is genuinely obsolete strongly suggest that the Law Commissions are better placed to conduct that work than Government departments. Added to which, the independence of the Law Commissions from Government and their track record since 1965 reinforce the trust that Parliament places in the Law Commissions; and it is that trust which has enabled Parliament to fast-track non-controversial Law Commission Bills including SLR Bills. However, we believe that there is merit in the Government and the Law Commissions looking at ways to increase the through-put of the Law Commissions. We would expect, at the very least, that consideration will be given to increasing the number of lawyers deployed by the Law Commissions on SLR work."

19. The Law Commissions and the Government share the common objective of repealing obsolete legislation in order to reduce the size of the statute book and make it easier for those who use it. We endorse the Committee's comments that the Law Commissions have had an excellent track record since 1965 of repealing obsolete legislation.

20. The Government welcomes the Law Commission for England and Wales' (the Commission) suggestions that Statute Law Repeals (SLR) Bills could be produced more frequently and be more responsive to modern needs. The Government will engage with the Commission on this point to see how we can best work together to achieve our shared objective.

21. We do not agree, however, with the Committee's recommendation to increase the number of lawyers deployed on SLR work. Rather, we agree with the former Chair of the Commission, Sir Terence Etherton, that it is in the field of Law Reform that the Commission plays its most influential role in society.

22. The Government will therefore continue to work with the Commission to improve the process of removing legislation that is no longer of practical use from the statute book.

Other provisions in the draft Bill which may have the effect of reducing Parliamentary scrutiny

23. The Joint Committee had some concerns over the levels of Delegated Powers or the reduction in levels of Parliamentary Scrutiny, on which they took advice from the DPRRC:

Paragraph No. 79. We accept the advice of the DPRRC that clause 7 gives rise to a point of principle about the unacceptability of ingredients of a criminal offence being outside Parliamentary scrutiny. We recommend that clause 7, in its present form, be removed from the draft Bill.

Paragraph No. 84. Whilst we do not object to the general provision introducing ambulatory references into the 1995 Act, we note the advice of the Commons Transport Committee about the scope of the power and also of the DPRRC to the effect that the Secretary of State's power to authorise directions in the proposed new section 306A(5) to (8) is too broad and an inappropriate delegation of legislative power. We recommend that these subsections should be amended so as to include a level of Parliamentary scrutiny.

Paragraph No. 85. We agree with the DPRRC and recommend accordingly that the delegations of legislative power conferred by provisions inserted by clause 43(2) and (3) of the draft Bill and by Schedule 8, Part 6, to the draft Bill should be exercised by way of statutory instrument, subject to the negative procedure.

Clause 7 – Suppliers of fuel and fireplaces

24. The DPRRC has indicated that moving the specification of authorised fuels and exempt fireplaces, from a parliamentary process to an administrative one is unacceptable. The DPRRC has also indicated that it does not accept the Government's justification for this proposal and the policy objective could be met by making statutory instruments more frequently than the current biannual arrangement.

25. Careful consideration has been given to the views expressed by the DPRRC but the Government's view remains that this delegation of legislative power is appropriate. The points raised by the DPRRC are addressed below.

26. The Government accepts that there is a need for legal certainty in the context of a criminal offence and its associated defence. The criteria for specification of products in the lists will be the same as that for specification in the current SIs; it will remain necessary to demonstrate that a product is capable of being used without producing any smoke or a substantial quantity of smoke. The Delegated Powers Memorandum for the draft Bill sets out the steps Government intends to take to ensure legal certainty is maintained in the move from subordinate legislation to administrative lists. The approved products will be published on the Defra smoke control webpages, which are already used to provide the public with information on specified products. The lists which will also be obtainable in paper format on request will contain the same information as currently included in the schedules of the statutory instruments and provide details of product name, fuel and manufacturers' instructions. Unlike the schedules the list will also specify the date of product approval, amendment or withdrawal. There are some additional inherent legal safeguards to protect consumers and manufacturers. The first of these is the requirement in the Clean Air Act 1993 to publish the lists. The other is that a decision to approve amend or withdraw an authorisation/exemption would be subject to judicial review if it is not taken correctly.

27. It is also worth noting that the smoke control statutory instruments for fuels and fireplaces (which now contain over 900 fireplaces and 63 fuels) have been issued since 1957 and biannually since 1970. There is currently is no evidence to suggest that the legislation has been challenged or that parliament has ever chosen to debate it.

28. The Government's rationale for this measure is that it will reduce the delay between products being recommended for approval and this approval being granted, bringing benefits to consumers and businesses by placing new technologies onto the market sooner. Once a product has been recommended for specification, Defra will be able to prepare a new entry to go on one of the published lists which will be revised on a monthly basis. Any new entries will undergo rigorous checking and require senior official approval within Defra but will not need to go through the same formal procedures as a statutory instrument. Defra anticipates that in most cases a product that is recommended for specification will be able to be added to the relevant list on the next occasion that the list is revised. Therefore, in most cases, it will not take longer than a month to complete the process of specifying a product.

29. The DPRRC has challenged this rationale and indicated that it considers that any delays faced by businesses are attributable to the Government's common commencement date policy which means that these statutory instruments are only made every six months. The department has considered the merits of producing the smoke control statutory instruments more frequently and concluded that this is not a viable option for achieving its objective. Making smoke control statutory instruments on a more frequent basis would significantly increase the workload of the Government without sufficiently reducing the existing burdens on business. In Defra's experience it is necessary to allow at least two months for the

making and coming into force of the smoke control statutory instruments. This is to enable the instruments to be drafted, the necessary checks to be carried out, Ministerial submissions to be prepared, signature and laying, and compliance with the 21 day rule. To be included in a particular statutory instrument a product needs to be recommended for specification at least two months before the coming into force date. Therefore, regardless of how frequently the department makes these statutory instruments there will be a delay of at least two months between a product being recommended for specification and that specification taking effect. Past experience indicates that many additional products will be recommended for specification during this two-month period with the result that the statutory instrument will be out-of-date by the time it comes into force.

Clause 48 – Ambulatory references to international shipping instruments

30. The Government welcomes the Committee's acceptance of the principle of introducing ambulatory references into legislation.

31. However, the Government does not think that the Committee's conclusion that sub-clauses (5) to (8) should be amended so as to include a level of Parliamentary scrutiny would meet the Government's objective of reducing the number of statutory instruments. It would simply create an alternative to the original order making power which could be used to modify the effect of the ambulatory reference. As a result the Government has decided to remove these sub-clauses from the Bill.

Justification of the level of parliamentary scrutiny in Clause 48

32. The Committee also asked for views from the Transport Select Committee, who had concerns about a possible reduction in the level of parliamentary scrutiny. The Government disagrees that this would be the case.

Paragraph No. 82. "The Commons Transport Committee also mentioned clause 48 with reservations: "The clause appears to give a far-reaching power to the Government to amend UK law to reflect changes to maritime treaties, bypassing Parliament entirely. … We think that this issue should be explored further. This Clause may need to be amended to ensure that it cannot be used to prevent Parliamentary consideration of substantive changes to international instruments."

33. The Government's rationale for including this clause in the draft bill was that the exercise of delegation conferred by the making of the ambulatory reference itself will only be possible where there is an existing power to make secondary legislation. The level of scrutiny appropriate to the subject matter of such legislation will have already been considered by Parliament and the department sees no reason why, if an ambulatory reference is to be included in such legislation, that there should be any change to the level of scrutiny. In a number of cases, particularly where the purpose of the legislation is to incorporate changes to the text of an international instrument, the secondary legislation is subject to the affirmative procedure. Parliament will, in almost all such cases, have the ability to consider the instrument containing the ambulatory reference under either the negative or affirmative procedure.

34. A further consideration is that in most circumstances a change to UK law taking effect as a result of the operation of the ambulatory reference will only take effect following a change to an international agreement which will have been agreed to by the UK government and which will already have been notified to Parliament. The only instances where this will not be are cases where the international instrument contains a process whereby supplemental provision can be made through the issue of a code or a standard or changes can be made to the terms of the instrument through the so called tacit acceptance procedure whereby a change becomes effective and binds all the signatories of the agreement once a certain

number of signatories have agreed. However, in both cases the possibility of such changes being made without the further need for the explicit approval of the UK government was already present when the decision was made to accede to the agreement, so this should not of itself demand additional scrutiny. Moreover, the type of change made via adoption of a code or use of the tacit acceptance procedure is usually incremental, technical, and developed in close consultation with industry stakeholders.

35. As noted in paragraph 31 the Government has decided to withdraw sub clauses (5) to (8) which provided for the issue of a ministerial direction to prevent an ambulatory provision from having effect or to modify its application from the Bill.

Clause 43 - Gangmasters (Licensing) Act 2004: enforcement

36. Under section 15 of the Gangmasters (Licensing) Act 2004 ('the 2004 Act') the Secretary of State allocates all enforcement responsibilities, including, it is believed, the conduct of prosecutions, to enforcement officers. Section 15 is thought to preclude the Attorney General from assigning functions relating the institution of proceedings for offences under the 2004 Act to the Director of Public Prosecutions (DPP) in England and Wales.

37. The power to assign arises under section 3(2)(g) of the Prosecution of Offences Act 1985 ('the 2005 Act').

38. This situation presents a problem for Defra and the Gangmasters Licensing Authority ('the GLA'). While in the past Defra had its own in-house prosecutors, it no longer does. A partial solution has been found at an administrative level in that, although decisions to prosecute are made by GLA officers, they are able to obtain advice from the Crown Prosecution Service.

39. The purpose of this clause is to make arrangements for the assignment of the relevant prosecution functions to the DPP for England and Wales under section 3(2)(g) of the 2005 Act.

40. **The Committee concluded that the powers inserted by clause 43, assuming that they are intended to be general in scope, should be exercisable by statutory instrument subject to negative procedure. Its concerns were twofold**:-

    (i) that the power can curtail the statutory functions of enforcement officers which are conferred by section 15 of the 2004 Act;

    (ii) that the power is conferred on the Secretary of State enabling him to remove these statutory functions from enforcement officers without requiring him, rather than merely enabling him, to transfer them elsewhere.

41. In response to these comments, the clause has now been redrafted. The government trusts that these changes will meet the concerns of the Committee.

42. The Clause now makes clear that:-

    a. the curtailment of the functions are to be set out in the terms of appointment or in the making of arrangements pursuant to section 15 of the 2004 Act;

    b. it will not be possible for a situation to arise where there is a 'gap', with neither enforcement officers nor the national prosecution authority being able to bring prosecutions.

Schedule 8, Part 6 – Regulation of the use of roads and railways, Rail Vehicle Accessibility Regulations (RVAR): exemption orders

43. Schedule 8, Part 6, of the draft Bill seeks to amend the Equality Act 2010 so that exemptions from rail vehicle accessibility regulations (RVAR) can be made administratively, rather than by statutory instrument subject either to the negative or draft affirmative procedure, as now. A similar proposal was made when the Disability Discrimination Bill was considered by Parliament before it became the Disability Discrimination Act 2005.

44. In its letter of 24 October 2013 to the Joint Committee, the DPRRC stated that it did "not consider that the position has changed greatly since our predecessor committee considered the matter in 2004-05".

45. The Government believes that the large reduction in the scope of RVAR that has taken place since the proposal was first considered justifies looking at this issue again.

46. The scope of RVAR has been greatly reduced since 2004-05, such that they no longer apply to rail vehicles that are subject instead to EU accessibility rules. The new EU regime was introduced in 2008 and includes accessibility requirements for heavy rail trains. These rules require new, upgraded or renewed vehicles to comply with the technical specifications for interoperability for persons with reduced mobility (PRM TSI). The EU regulatory regime and the RVAR regime have similar technical requirements.

47. The EU accessibility regime applies to mainline services, i.e. the majority of train services and almost three quarters of all rail vehicles. RVAR now applies only to a minority (approximately one quarter) of rail vehicles – mostly light rail such as trams, metros and underground but also including heritage and tourist vehicles and people movers at airports.

48. The EU accessibility regime is implemented in the UK by the Railways (Interoperability) Regulations 2011. Whilst both the EU regime and the regime under the RVAR allow for exemptions to be granted, one difference between the two regimes is that exemptions from RVAR are made by statutory instrument, while exemptions from the PRM TSI can be made in Great Britain by the Secretary of State making an administrative determination. This administrative determination is subject in some cases to the approval of the European Commission – see regulation 14 of the 2011 Regulations.

49. The Government believes it is incongruous that, if sought, exemptions for the hundreds of trains serving Gatwick, Stansted and Birmingham Airport stations would be subject to an administrative process, while any for the seventeen small vehicles moving passengers between terminals would remain subject to a process involving Statutory Instruments. Or that Parliament's approval would be needed if any exemptions are sought for new vehicles on the Bluebell and Wensleydale steam railways but not if any are sought for the mainline trains taking visitors to those operators' termini at East Grinstead and Northallerton.

50. Removing the requirement for RVAR exemption orders to be made by statutory instrument will therefore bring the light rail regime more in line with the EU regime. We believe this is more proportionate, particularly given that other safeguards will remain, including consultation requirements, final approval by the Secretary of State and annual reporting by the Secretary of State to Parliament on the use of the exemption powers.

51. In particular, the requirement in the Equality Act 2010 for the Secretary of State to consult the Disabled Persons Transport Advisory Committee[1] (DPTAC) before granting an exemption is unchanged. The Government believes that DPTAC's continued involvement in

[1] DPTAC was established under section 125 of the Transport Act 1985 to advise the Government on the public passenger transport needs of disabled people.

considering the merits of each application will ensure that the needs of disabled people are given appropriate weight, while the Annual Report to Parliament will allow Parliament to consider whether the powers had been used excessively in the past year and call Ministers to account if it so wished.

52. The Government made clear during its consultation that there would be no reduction in the strength of argument required before an exemption was granted. More background information about the proposal is set out in the Government's March 2013 consultation, which can be found with a summary of the consultation responses at:https://www.gov.uk/government/consultations/proposed-changes-to-exemptions-from-rail-vehicle-accessibility-requirements

53. A large majority of those who responded to the consultation supported the proposal, including representatives from the industry and DPTAC.

Clause 28 – Model Clauses in petroleum licences: procedural simplification

Paragraph No. 86. "The DPRRC also draws our attention to clause 28 on model clauses in petroleum licences. We consider this provision in Chapter 5 of [the Committee's] report."

54. Upon the Committee's advice regarding levels of consultation, the Government has decided to remove this Clause pending further consultation. While this Clause undergoes further consultation DECC lawyers will consider the comments of the DPRRC further.

Growth Duty

55. The Committee received a great deal of written and oral evidence on the Growth Duty for Non-Economic Regulators. The Government is pleased that the Committee welcomed the Growth Duty:

    Paragraph No. 104. "**We conclude that an economic growth duty on regulators is welcome provided that safeguards are in place to ensure that the growth duty does not take precedence over regulation and that the overriding and principal objective of regulators remains the protection of the public interest. We welcome the Minister's assurance on these points; that the duty will not "take precedence over the main reason for their existence ... [or] impinge on the confidence that the public have in the way they exercise their regulatory function".**"

56. The growth duty clauses are drafted to ensure that economic growth is a factor to take into account alongside regulators' other statutory duties.

57. The clauses provide the Secretary of State with a power to issue guidance on the ways in which regulatory functions may be exercised so as to promote economic growth. This will help regulators to understand how they can implement the duty. The Government has now published this guidance in draft. It explains that:

    a. The duty does not set out how economic growth ranks against existing duties as this is a judgment only a regulator can and should make.

    b. The duty does not oblige the regulator to place a particular weight on growth.

58. Additionally, the draft guidance states that in instances where immediate enforcement action is required to prevent or respond to a serious breach, the growth duty would still apply but would not preclude immediate action.

59. The final guidance will be published at an early stage to support Parliamentary passage of the Deregulation Bill. It will be subject to the affirmative procedure in due course.

60. The clauses as drafted and the further detail provided by the draft guidance demonstrate that the necessary safeguards are in place.

    Paragraph No. 105. "Furthermore, we recommend that any powers given to Ministers to issue guidance, under clause 60(2)(b) of the draft Bill, on how the economic growth duty should be performed must not compromise the independence of regulators. The Government should consider making this clear on the face of the Bill."

61. The Government agrees that the guidance on the duty should not compromise the independence of regulators. The role of government is to determine the objectives for regulation, but then stand back. The growth duty clarifies that growth is a factor for regulators to consider as they carry out their functions. Regulators will be free to decide how best to incorporate the duty into their decision-making and the growth duty will not affect their independence.

62. There was a consensus across regulators and businesses responding to the consultation that guidance would be helpful. The Government thinks it is important to produce guidance to support regulators to implement the duty, but this it is only guidance; the power has been drafted carefully so that the guidance will not impose any new legal duties on regulators

and we do not therefore think it is necessary to amend the clause further to protect the independence of regulators.

63. In addition, the guidance will be subject to the affirmative procedure so Parliament will be able to debate whether it strikes the appropriate balance in affording regulators the appropriate latitude to determine how best to implement the duty themselves.

Paragraph No. 116. "Given the evidence we have received, we recommend that the Government review with some care the list of organisations to which the growth duty is intended to apply and consult fully with the organisations proposed. There is a risk that there may be, for some regulators, disproportionate and unintended consequences of the duty which need to be identified before the duty is introduced. We note the inclusion of the Equality and Human Rights Commission and the risks that its inclusion may present to its international standing."

64. The Government provided the Committee with an indicative list of those regulators whom it is considering to be in scope of the duty.

65. The Government agrees that there is a need to ensure any unintended consequences are avoided. We have consulted extensively with regulators during the development of the policy and the consultation, as well as working closely with them to develop the draft guidance. We will continue to work with regulators during the parliamentary passage of the Bill to evaluate risks and refine this list further.

66. The clauses provide that those who are in scope of the growth duty will be specified in a statutory instrument that will also be subject to the affirmative procedure. In addition, this order making power is subject to further consultation requirements. The Government is of the view that this will ensure that any unintended consequences are avoided.

67. We note the Committee's observations on the EHRC and recognise the need to avoid inadvertently jeopardising its international standing. We will work closely with EHRC to consider this issue further before finalising the list of regulators.

Paragraph No. 119. "We welcome the Government's reasons for proposing a duty on regulators to have regard in broad terms to "economic growth". "

68. We welcome the Committee's recognition that the duty should require regulators to have regard to economic growth in broad terms, as the growth duty will require regulators to interpret economic growth in different ways in different circumstances. There will be some circumstances where it would be appropriate to consider short-term impact, for example, before issuing a small fine; and in other circumstances it would be more appropriate to consider long-term impact, for example, when considering how to implement new regulations.

69. The term economic growth is clear and easy to understand, which is what the law should be. This duty applies to all regulators across a range of business sectors and in this context we therefore want to avoid an overly prescriptive approach. The Government has therefore decided to remove the provision from the draft clauses which would allow the Secretary of State to issue guidance on the meaning of economic growth as we no longer believe this is necessary.

Paragraph No. 123. "We recommend that the Government consider by what criteria the impact of the duty could be demonstrated. We welcome the Minister's commitment to reflect further on the matter."

70. As the Committee recognised, the economic impact of this policy is not easy to quantify, however the Government is publishing an impact assessment alongside this Bill, which sets out a preliminary assessment of some of the anticipated economic benefits of the growth duty. The impact assessment draws on evidence from a new survey of businesses' interactions with regulators. This survey could be repeated in future, and supplemented with case study evidence, to track the impact the duty is having. We would expect an evaluation to detect any positive changes in the way business interacts with regulators which may over the longer term be an enabler of growth.

71. At this stage the Government does not propose that the growth duty should impose additional reporting and monitoring requirements on regulators. However there will be an expectation that regulators are transparent in demonstrating regard for the duty using existing mechanisms like annual reports and publication of service standards in fulfilment of the Regulators' Code. The Department for Business, Innovation and Skills will monitor the implementation of the growth duty through such existing reporting mechanisms in the first instance.

Use of Land Provisions

72. The Government welcomes the Joint Committee's recommendation that the package of rights of way reforms contained in the draft Bill should be accepted as a whole, in order to maintain the Stakeholder Working Group consensus:

    Paragraph No. 130. "**We are aware that the law governing rights of way is highly contentious and commend the SWG for its achievement in reaching a consensus on the issue of recording unrecorded historic rights of way. We acknowledge also that maintaining that consensus requires the package of reforms contained in the draft Bill to be accepted as a whole."**

    Paragraph No. 139. "**Whilst the SWG has managed to forge a consensus in support of the package, aspects of the new provisions are still under discussion both within the SWG and more widely. We expect the Government to show leadership and balance to take this vital part of our Report to a successful conclusion."**

73. Defra is continuing to convene the Stakeholder Working Group and engage in wider discussions with stakeholders, such as the Intrusive Footpaths campaign, in order to see the rights of way reforms package through to a successful conclusion.

    Paragraph No. 145. "We have some concerns about the current backlog of rights of way applications and the likely additional pressures caused by the reforms and the imposition of the cut-off date. We question whether the implications for local authorities, in particular, have been fully assessed by the Government. Against this background, if these clauses are to go forward in this Bill, the Government will need to address the impact on local authorities."

74. The Government fully recognises the concerns about the current backlog of rights of way applications and the additional pressures likely to be caused by implementation of the cut-off date. Indeed that is the reason behind the formation of the Stakeholder Working Group and implementation of their recommendations for simplifying and streamlining the current procedures, in order to complete the task of completing the definitive map. Although it has been suggested that measures such as replacing the Secretary of State's role with the magistrates court shift a burden rather than removing it, the policy is specifically aimed at helping to reduce the local authority backlog.

75. We cannot intervene in the way that local authorities choose to resource their rights of way work, but we can ease the burden of this work through reform. Local authorities are expected to make savings of almost £2 million a year through these measures. The Deregulation Bill presents an opportunity to reduce bureaucracy in this area and through these clauses.

76. The key bodies that represent local authority rights of way practitioners on the Stakeholder Working Group are urging the Government to implement the reforms package. The Government is also continuing to engage with all local authorities across England through workshops and seminars organised by the Institute of Public Right of Way and Access Management to ensure that we assess both the practical and legal impacts of the Bill on local authorities.

    Paragraph No. 154. "We took the view at the outset that we would focus our attention on the clauses in the draft Bill and that we would not consider proposals for additional provisions. Given the level of public interest in rights of way, however, we draw to the attention of the Government the wider rights of way concerns raised in the course of this inquiry and urge them to take action to meet them."

77. The Government recognises that there are difficulties with rights of way that go through family homes or conflict with current land management. We believe that the rights of way clauses in the Bill will address these concerns.

78. Through some of these clauses Defra is working towards making effective the legislation that provides for a statutory 'right to apply' for landowners. This enables landowners, including householders, to make a formal application for diversion or extinguishment of a right of way on their land and appeal to the Secretary of State should the local authority refuse the application or fail to consider it.

79. There are also clauses to ameliorate the effect on landowners of unrecorded or newly discovered public rights of way. We are introducing a presumption in favour of a landowner's request for a diversion under certain prescribed circumstances, for example where a public right of way goes through a private garden, or working farmyard, or other areas where privacy, security or safety is an issue.

80. There is clearly considerable debate on the need for further reform to the legislation governing the use of motorised vehicles on public rights of way and minor unsealed roads, especially in National Parks. We have sympathy with the concerns of those who have put forward proposals to protect routes that are vulnerable to damage by motorised vehicles. However, we believe that the motor vehicle issue is quite different in nature to that of recording historical rights of way and completing the definitive map.

81. Defra considers that any change to the current government framework for managing motorised vehicles should be the subject of a full public consultation. We believe that this issue needs to be fully debated and a separate package of policy measures formulated for implementation, through legislation if necessary, when a suitable opportunity arises.

Other Clauses/Wider concerns raised by the Committee

82. The Committee said that some measures had had insufficient consultation. The Government has noted their comments and looked at the specific clauses in more detail:

    Paragraph No. "168. While we very much welcome the opportunity to carry out pre-legislative scrutiny on the draft Bill, we are clear that our scrutiny is not part of the consultation process that should be carried out by Government. Government should not rely on Parliament to consult on their behalf. However, they should take note of the evidence we received."

    Paragraph No. 169. "[…] we conclude that the consultation carried out by the Government for a number of provisions in this Bill is inadequate. We are unable to comment on the adequacy of the consultation for clauses we did not examine in depth but we would encourage the Government to review critically the extent of its consultation on all clauses before the Bill is introduced to Parliament."

    Paragraph No. 170. "**We were pleased to note the Minister's commitment to consult further on clauses that we identified needed fuller consultation. We recommend that further consultation is carried out on clauses 9, 28 and 40."**

83. As a Government we wish to run proportionate and meaningful consultation processes. We feel that the clauses in the Bill, in general, have been subject to this process. However, we take note of the Committee's specific references to Clauses 9, 28 & 40.

84. Before Clause 9 on the authorisation of insolvency practitioners was brought forward there was both a period of consultation by correspondence and an opportunity for interested parties to attend a meeting on the issues. The issue was also the subject of further updates to insolvency practitioners. As part of the pre-legislative scrutiny process, we nonetheless heard comments, both from the Committee and from some parts of the insolvency practitioner industry, that there should be a further opportunity to comment. Therefore, the Government plans to invite any further such views in parallel with the progress of the Bill. If this process reveals new issues that have not yet been considered by the Government, we will aim to address this by amendment.

85. The Government intends, on the Committee's advice to remove Clauses 28 & 40 from the Deregulation Bill pending further consultation.

The Committee's conclusions on deregulatory extent of the Bill

86. The Committee commented on the deregulatory nature of some of the clauses of the Bill. Their recommendation was that the Government should satisfy itself that each of the clauses was deregulatory in nature. The Government has worked with Parliamentary Counsel to assure itself of this and we are content that each of the clauses does have an actual deregulatory effect and is not just shifting a burden.

    Paragraph No. 189. "**We recommend that, before the Deregulation Bill is introduced into Parliament, the Government should ensure that the overall effect of each and every provision in the Bill is demonstrably deregulatory so that the Houses may be satisfied that each is within scope of the Bill."**

87. The Committee in particular queried whether the order-making power and the Growth Duty were deregulatory and whether Clauses 29 and 33 & Schedule 14 were just shifting a burden.

The Order-making Power

88. In the Government's view the order-making power (which has now been removed) that enables a Minister to disapply legislation that is no longer of practical use, was deregulatory. It would have allowed the Government to reduce the size of the statute book which in turn would save the time of lawyers and others who use it, as well as reducing the unnecessary costs that this creates. It would also save times for users who may rightly assume that an obsolete law is still in use if it appears on the statute book, and prevent them being misled.

The Growth Duty

89. As set out in the Government's evidence to the Committee, the Government believes that the duty will have an overall deregulatory impact, principally by supporting less burdensome regulation for businesses. The final guidance, when published, will illustrate potential ways in which regulators may have regard to the growth duty, several of these point to this having deregulatory effects for individual businesses, for example:
    a. Keeping the burden on business productivity to a minimum. Regulators can directly influence a business' growth prospects by avoiding unnecessarily diverting resources away from core operational or strategic activity.
    b. Being proportionate in their decision-making. This means ensuring that interactions with businesses are necessary and proportionate to the risks posed by non-compliance and ability of the business to incorporate change. This applies to both the provision of advice and guidance and enforcement action.
    c. Understanding the business environment. This means tailoring regulatory activities according to an understanding of the business environment and stages in the business lifecycle, and applying this understanding when dealing with businesses on the ground.

Clause 29 - Household Waste: Decriminalisation

    Paragraph No. 188. "**In our view, for some of the provisions in the draft Bill – such as decriminalisation of household waste (clause 29) – the balance may well have resulted in an overall increase in burdens with a greater burden being placed on one part than is lifted from another".**"

90. Clause 29 reduces the regulatory burden on householders by removing the criminal offence of failing to present waste for collection in line with local authority requirements. The

Government is clear that it is not right that individuals are treated like criminals if they put out their waste incorrectly. Moreover, the Government's proposals do not add significant burdens compared to how the current arrangements operate in practice. The proposals are introduced to provide clarity on the process local authorities will need to follow when pursuing civil sanctions in this area.

Clause 33 & Schedule 14 – Schools: reduction of burdens

91. Clause 33 is a package of several measures designed to reduce burdens on schools. The Committee identified a risk that some of these proposals, (in particular, schools setting their own term dates, the removal of requirements to have regard to guidance on staffing matters and the proposed measure on behaviour) may not be truly deregulatory. For term dates and staffing matters, the Committee heard that the proposals just shifted a burden, rather than removing it and for the behaviour measures, the Committee heard that this was not a burden as it stood, so there was no need to remove it.

92. On Schedule 14, part 3 (school term dates), many thousands of schools (voluntary aided schools, academies and free schools), educating around 48 per cent of all registered pupils in England, already have responsibility for their own term dates. The Government does not think that enabling all schools to set their own term dates will be a significant burden on them. Deregulation is also about removing laws and rules that get in the way of public sector bodies and making changes quickly that can benefit the way services are delivered. This deregulation makes it easier for schools to make innovative changes to their school year, including the ability to coordinate terms with other schools, to help pupils and parents. However, schools will be free to continue with the status quo. We see no rationale for restricting the freedom to vary the school year to some schools based solely on school type.

93. Any burden would be relative to the decisions a school makes. If they decide, as the experience of academies suggests most will, to retain their existing term dates, then the burden of informing parents would be very low. Schools already communicate with parents regularly on a range of issues through their website, letters, email and so on. Local authorities have told us that they would continue to propose dates, but schools would be free to co-ordinate dates through a different mechanism if they wished to. If they decided to vary their existing term dates, for example moving to a five-term year, they would need to consider a range of issues and consult parents. It would be, however, for schools to decide whether to vary their existing term dates and so any burden on schools would be proportionate. The Government will publish new advice to schools to help them manage their new responsibilities.

94. On Schedule 14, part 4 & 5: (Proposal to remove the statutory guidance on staffing matters) the Committee heard that there was a risk this would impose a burden on schools who would, as a result, need to seek advice individually. However, the Government would like to clarify that we are replacing the statutory guidance with non-statutory advice for all schools.

95. On Schedule 14, part 1: (Proposal to remove the requirement for governing bodies to produce a statement of principles on behaviour) whilst the Committee heard that this could just shift a burden, rather than removing it, the Government is clear that this is not the case. Currently the governing body of a maintained school is required to produce a written statement of general principles on behaviour, and the head teacher must have regard to that statement when determining the behaviour policy. This measure removes the requirement for the governing body to produce a written statement, but not their responsibility to ensure that the head teacher determines the overall behaviour policy, or their ability to influence its contents. The head teacher remains accountable to the governing body. The governing body can still help formulate the school's behaviour policy but we will no longer specify how they should be involved.

Wider concerns

96. The Committee identified some additional clauses which had evoked high levels of interest in both the Call for Evidence and in the evidence sessions. These were clauses 1, 2, 3, 9, 28, 33, 35, 40 and 47 (the issues concerning Clauses 28 & 40 are dealt with in other parts of this response).

    Paragraph No. 237. "**We have no doubt that Parliament will wish to be assured that the Government have taken full account of the possible consequences of these provisions [Clauses 1, 2, 3, 9, 28, 33 (and Schedule 14), 35, 40, 47] if they decide to take them forward into the Bill."**

97. The Government has considered the Committee's comments carefully and will continue to consider the consequences of these provisions as the Bill progresses through the House. A response to the comments is below.

Clause 1 – Health and Safety at work: general duty of self-employed persons

98. The Committee heard a wide variety of opinions on Clause 1 including that it would not lift a significant burden and that it could cause confusion.

99. In his review of Health and Safety legislation, Professor Löfstedt recommended that self-employed persons be exempt from Health and Safety law where they pose a low risk of harm to others through their work activity. The Government has accepted this recommendation.

100. Clause 1 acts on that recommendation by exempting self-employed persons who do not pose a significant risk of harm to others from Health and Safety legislation. The Secretary of State can prescribe a list of those activities which would be expected to pose a risk of harm to others. Self-employed persons undertaking prescribed activities must comply with section 3(2) of the Health and Safety at Work etc. Act 1974.

101. The Government has taken note of evidence to the Committee that confusion may arise as a result of the way the Clause is currently drafted. The Government, therefore, intends to make the prescribed list of high-risk work activities, where self-employed people will not be exempt from Health and Safety law, robust and clear so it is easy for self-employed persons to check and understand. To make this absolutely clear, the Clause will be adjusted to remove part b), so that all those self-employed persons who do not undertake activities on the prescribed list will clearly be exempt.

Clause 2 – Removal of Employment tribunals' power to make wider recommendations

102. Some witnesses told the Committee that removing this provision would be unnecessary and premature. The Government does not agree.

103. Since the power came into effect three years ago, around 28 Tribunal cases have been given wider recommendations. A clear pattern is already visible with around 70% of the recommendations focused around training for management or updating the diversity policy. It is unlikely that this pattern is going to change significantly going forward, or that much more would be learnt about the use of the power by reviewing it and allowing it to run on for several more years.

104. In order to assess the effectiveness of the power, the Government Equalities Office wrote in autumn 2013 to 27 of the employers who had received wider recommendations so far. They were asked whether they had taken forward those recommendations and how much it had cost them to do so. Eight responses were received, six from private and civil sector employers. All the employers who responded had implemented the wider recommendations with an average cost to business of around £2,000.

Clause 3 – English apprenticeships: simplification

105. The Committee heard that these proposals could cause: a drop in quality; discrepancies between England and Wales; and additional burdens on employers:

106. The Government's intention is that the changes will facilitate a rise in quality rather than a fall. The recent review of apprenticeships by Doug Richard found that employers do not always feel that apprenticeships are relevant to their business. The changes give employers more control over the content of apprenticeships and how they are assessed. The Bill does not contain detail about the processes that will improve quality the Government does not think this is a matter for primary legislation. As new standards are developed and more detail emerges we hope this will reassure stakeholders of our continued commitment to the quality of apprenticeships.

107. Apprenticeships are a devolved matter and currently each of the four nations has its own apprenticeship system with different content and rules. Although the Welsh system is similar to the current English system, there are significant differences, for example Wales and England have separate apprenticeship frameworks. The changes to English apprenticeship legislation are essential to implement government's plans for the future of apprenticeships. The devolved administrations have been included in discussions about the changes to English apprenticeships.

108. The Government does not believe that the changes place any extra burden on employers. Employers who wish to develop standards will be able to do so and the process will be as flexible and simple as possible. The proposed changes strip out much of the bureaucracy in the current system. We believe that the result of the change will be an increase in the relevance of apprenticeships. Employers will notice a significant improvement in apprenticeships and we expect that as a result more employers will want to offer apprenticeship places. We also plan to change the funding system for apprenticeships and will try to make the system as clear and simple as possible for employers including small businesses.

Clause 9 – Authorisation of insolvency practitioners

109. The Government believes that the change to allow specialised authorisation for insolvency practitioners (so that they can specialise in either the personal or corporate insolvency disciplines) will be deregulatory, as individuals seeking authorisation will only need to be qualified in their chosen discipline. Currently persons wishing to be authorised as insolvency practitioners have to take examinations in both personal and corporate insolvency, even though once authorised they may decide to specialise in one of those disciplines. Many insolvency practitioners already choose to specialise, yet existing regulation requires them to study areas that have little or no relevance to their work or are of benefit to their clients. The change will lift this burden and reduce training costs.

110. Regulators will be able to offer specialised authorisation to their members but there will be no compulsion on them to do so. If existing regulators wish to only offer full authorisation they will be able to do so, alternatively they, or a new regulator, will be able to seek authorisation from the Secretary of State to offer partial authorisation.

111. It will still be possible for an individual to be fully authorised to act as an insolvency practitioner and practise in all categories of appointment. There will be no impact on existing authorisations or on insolvency practitioners who choose to be fully authorised in future.

112. The Government does not believe that the change will reduce standards. All insolvency practitioners will be required to acquire a broad-based knowledge of insolvency, and those who choose to specialise will be qualified to the same extent as a fully authorised practitioner in that specialism. It is expected that clients will benefit from this specialism. It is possible that in the Individual Voluntary Arrangement sector, where an office-holder may be responsible for many hundreds of cases, that the ratio of authorised practitioners to insolvents will increase, which is likely to have a positive impact on standards.

113. By reducing the barriers to entry, the changes are expected to improve accessibility to the insolvency practitioner market, thereby increasing competition which is good for consumers of insolvency services. The change will benefit new entrants to the market who will be able to save on training and examination fees.

114. Some Scottish insolvency law is different to that in England and Wales, but insolvency procedures in Scotland are divided, as in England and Wales, between personal and corporate procedures, such that the principle of specialisation will bring the same benefits to competition and de-regulation. Whilst there are differences in the detail of the regimes between the jurisdictions there is no compelling reason why the Scottish insolvency market should not benefit from the change.

115. The Government is engaging with regulators in Scotland, the insolvency profession and the Accountant in Bankruptcy the Scottish Government Agency with policy responsibility for devolved insolvency law, as to whether a partially authorised insolvency practitioner should be able to act as office-holder in a Scottish partnership, and whether special provision should be made for them.

116. As stated earlier, following the Committee's recommendation, the Government is inviting any further views on this Clause during the passage of the Bill.

<u>Clause 28 – Model clauses in petroleum licences: procedural simplification</u>

Paragraph No. 217. "**We recommend in paragraph 170 that the Government undertake further consultation on this provision [Clause 28]. Furthermore, we recommend, in the light of responses to that consultation, that the Government consider whether the clause is in scope of the Bill and whether the delegation is fully justified."**

117. As stated earlier, upon the Committee's advice regarding levels of consultation, the Government has decided to remove this Clause, pending further consultation. While this Clause undergoes further consultation, DECC lawyers will consider the comments of the DPRRC and the deregulatory nature of the proposal further.

<u>Clause 33 – Schools: reduction of burdens</u>

118. The Committee received evidence about the following parts of Clause 33 & Schedule 14: Enabling schools to set their own term times; Removing the requirement for governing bodies to produce a statement on Behaviour; Staffing Matters and Home School Agreements

119. On Schedule 14, part 3 (Enabling schools to set their own term times) the Committee received evidence giving mixed support for the proposal for schools to set their own term dates. ASCL told the committee that the risks of deregulating in this area were "fairly

minimal" given the pressure on schools from parents to maintain cohesion. Other witnesses felt it could lead to a lack of coordination and difficulties for working parents.

120. The Government recognises the understandable concerns raised about parents with children in multiple schools. This proposal, however, will not lead to a total lack of coordination, sudden change without warning or unrecognisable term dates. Thousands of schools, educating around 48 per cent of all school-registered pupils, are already responsible for their own term dates. This experience suggests that most schools will make no changes as a result of this deregulation, and those that do will act sensibly and with the support of parents.

121. The Government also recognises the value of schools setting term and holiday dates within a broad framework to help parents and others to plan holidays and work commitments, but believes schools should have greater autonomy. This is the position now for thousands of academies, free schools and voluntary-aided (church) schools. The Government wants all schools to have the freedom to change their school year, where there is a compelling need, without needing to seek agreement from the local authority. Removing the local authority's formal role does not mean there would be no local co-ordination of dates. Local authorities have told the Government that they would continue to propose dates, which schools could decide to follow. Schools would be free to co-ordinate dates through a different mechanism if they wished to, for example, in an area of high seasonal employment.

122. Term dates would only change where the governing body (which includes parent governors) initiate such changes and make decisions within the wider context; following consideration of parents' views. All schools must act reasonably when setting term dates; which includes considering parents views and giving adequate notice.

123. The Government has fully considered the impact of these proposals on working mothers and has prepared an impact and equality statement. Our judgement is that the pressure on schools from parents would mean that any changes, where the school decides to make them, would likely have a favourable impact on working mothers. We trust schools to act reasonably, taking parents views into account. Changes to term-dates could have significant benefits for working mothers, helping them to manage the summer holiday, work around seasonal employment, or making it easier to observe their religious festivals without damaging their child's education.

124. On Schedule 14 part 1: (Removing the requirement for governing bodies to produce a statement on Behaviour) the Committee heard that school governors are legally accountable for the school's behaviour policy and must, therefore, remain involved in the process of determining its contents.

125. These proposals are part of the moves to streamline the role of governing bodies, removing red tape and giving them the powers they need to get on with their strategic role of setting the direction for the school. These measures remove the requirement for the governing body to make and review a written statement of general principles, to which the head teacher is to have regard when determining a separate document called the 'behaviour policy'. The Government is, however, clear that while the governing body would no longer be required to produce a statement they will still be able to influence the contents of the behaviour policy and hold the head teacher to account.

126. Determining the behaviour policy will remain the responsibility of the head teacher under section 89 (1) of the Education and Inspections Act 2006. Under Regulation 6 of the School Governance (Roles Procedures and Allowances) (England) Regulations 2013, governing bodies will still have a wider strategic role to hold the head teacher to account for their core functions.

127. Informal soundings suggests that many governing bodies are unaware that they are currently required to produce this statement, and instead already simply focus on what the head teacher has included in the behaviour policy. Governors retain a strong role in this streamlined process.

128. On Schedule 14 part 4 & 5 (Staffing Matters) The effect of this change would be the removal of the existing statutory guidance 'Guidance on managing staff employment in schools'. Some witnesses identified a possible risk that this proposal would place a burden on schools to seek out and meet the costs of their own advice on staffing matters and a lack of consistency.

129. The Government are mitigating that risk as this proposed reform is part of a package we are considering to improve the support we provide to schools in this area. In parallel we are reviewing the provisions within the School Staffing (England) Regulations. Our intention is to streamline and simplify these, with the aim of providing schools with greater autonomy over their own affairs and removing unnecessary requirements.

130. To complement this, the Government intends to produce supporting non-statutory advice that clarifies the requirements of employment law and explains what additionally is required of school employers by education legislation. The advice will also signpost schools to sources of relevant advice, such as that provided by ACAS. Our intention is that this advice will be relevant to all publically funded schools, not just maintained schools.

131. On Schedule 14 part 2 (Home School Agreements) the Committee heard evidence on this proposal that was generally supportive, with ASCL, Voice and LGA welcoming the proposal, and the NGA noting that home school agreement are often little more than a "tick-box exercise". The Government recognises the point, made by NASWUT, that removing the duty could 'send the wrong signal' about parental engagement. We do not, however, feel that a requirement for schools to have home school agreements in place is the most effective way of ensuring parental engagement. All schools will be free to develop their own approaches to engaging parents that are best suited to the local context of the school and individual families.

Clause 35 – Repeal of Senior President of Tribunals' duty to report on standards

132. The Committee heard evidence that the timing of these proposed changes, coming at a time of significant changes to the benefits system and an increase in the number of appeals, was a risk. However, the Government is clear that it has mitigated these risks.

133. It is especially important that during the introduction of benefit appeals, feedback is as timely and useful as can be, and new initiatives such as the introduction of summary reasons reflect this.

134. The removal of the duty to report on DWP decision making standards is not an attempt to remove transparency or accountability in the assessment of decision-making standards. Rather, it represents an attempt to reform the way in which decision makers received feedback from the Tribunal, and to ensure that that feedback is as useful as possible.

135. MoJ Tribunal statistics, which includes appeal volumes and overturn rates, will continue to be published quarterly. These can be found at: https://www.gov.uk/government/collections/tribunals-statistics

Clause 40 – Repeal of powers to provide accommodation to persons temporarily admitted to the UK etc

> **Paragraph No. 233.** "**We did not receive evidence on this clause [40] from these groups, but would encourage the Government to bring the matter to their attention and seek their views when conducting the consultation which we have recommended in paragraph 170 above."**

136. The Government has removed the Clause pending further consultation.

Clause 47 - Repeal of duties relating to consultation or involvement

137. The Government believes that local authorities should be trusted to engage with local people without a duty being imposed on them to do so. Removal of this duty will free local authorities from unnecessary top down burdens and enable them to focus instead on serving their local communities. This fits in with the Government's localism agenda.

138. The Committee heard concerns from environmental groups, such as Friends of the Earth about whether this series of repeals might limit public participation, in particular in relation to environmental issues. However, these repeals will not adversely affect community involvement and the Secretary of State or the other public authority will continue to be able to consult where this is considered appropriate.

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