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Lord Goodhart
Chair of the Delegated Powers and Regulatory
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From the Parliamentary under Secretary

Lord Davies of Oldham

Dear William,

The 6th Report of the Delegated Powers and Regulatory Reform Committee, published on 4 March, included the Committee's views on delegated powers contained within the Flood and Water Management Bill. I am writing to you to set out the Government's response to the Committee's detailed comments on the Bill.

Clauses 4 and 5

We note the Committee's concern that the powers in clauses 4(2)(f) and 5(2)(c) are not expressly limited to adding only statutory functions. As we stated in our memorandum to the Committee, we only intend to use the power to add existing functions to the list. Since this is explicit elsewhere in the Bill (such as in clause 11(7) and (9)) we are now tabling amendments to make it clear that these powers too are confined to statutory functions.

Clause 7

The Committee's report points out that the provisions on guidance in clause 7 of the Bill do not follow the precedent in the Environmental Protection Act 1990, for other

similar guidance which must be complied with, and provide for negative resolution procedure.

In light of the concerns raised by the Committee we are tabling amendments for negative resolution procedure to apply to the strategy and the guidance under clause 7. Following discussion with Welsh Assembly Government, we will also be tabling an amendment for the guidance under clause 8 to be subject to the negative resolution procedure in the National Assembly for Wales.

Clause 15, and Schedules 1, 3 and 4 – Appeals

The Committee took the view that the various appeals provisions in the Bill would also need to cover matters such as the grounds for appeal and the powers of the prescribed appellate body. It argued, therefore, that the powers to make provision about appeals in clause 15(8), and elsewhere in the Bill should be subject to the affirmative resolution procedure, at least the first time those powers are used. We are now tabling amendments to that effect.

Clause 15 – Maximum penalty

We have considered the Committee's concerns around the ability to change, by order made under clause 15(9), the maximum penalty that can be imposed under this clause. In light of this we are tabling an amendment to ensure that changes may only be made in order to reflect a change in the value of money.

Clause 29 – Restructuring

The Committee notes that while a Henry VIII power such as this might be limited to Acts passed before the end of the Session in which the legislation containing the power is passed, there is no such limitation here. While the Committee made no recommendation for a change to this provision, it suggested that the House might wish to seek an explanation for this drafting.

We have carefully considered the Committee's concerns around the application of this Henry VIII power but in this instance consider that its application to future legislation is justified for the following reasons. Specifically, we intend – as recommended by Sir Michael Pitt's Review into the Summer 2007 floods - to consolidate the present Bill with existing flood and coastal erosion legislation (and any further legislation not included in this Bill but identified in the draft Bill published in April last year). The power in clause 29 would also need to apply to any such further floods legislation and to any subsequent consolidation legislation.

Generally, it is also necessary to have this power since future legislation may create bodies which it may be thought should be integrated into the flood or coastal erosion

risk management institutional framework. This need may not be apparent at the time the legislation is passed and so the power to do so at a later time by virtue of the power in clause 29 without having to wait for yet further primary legislation would ensure the sort of future flexibility we consider necessary to allow the Government of the day to be adaptive and responsive in ensuring all the relevant bodies are best placed to tackle flood or coastal erosion risk.

The provision does, of course, make any use of the power to transfer responsibilities subject to both a duty to consult those bodies affected and the affirmative resolution procedure in Parliament.

Clause 47 – Pre-consolidation amendments

We have considered the Committee's point on why the power in clause 47 is not conditional on the presentation, or passing, of a consolidation Bill, and have decided that it would be beneficial to make the power in clause 47 conditional on the presentation of a consolidation Bill. We are therefore tabling an amendment to this effect.

Schedule 4 – Reservoirs

The Bill proposes a mix of negative and affirmative procedures for the new delegated powers to be inserted into the Reservoirs Act 1975, but as the Committee has rightly noted, the existing delegated powers in the Act attract no parliamentary procedure. These cover technical, procedural, matters but all the same form part of the suite of delegated powers in the revised Reservoirs Act that will implement a more risk-based approach, which is our main aim.

The Committee has made no recommendation, noting only that the absence of scrutiny is not inappropriate to the existing powers. However, where we believe it beneficial to provide for parliamentary procedure for the existing delegated powers in the Act, we are now tabling amendments to do so.

Finally, I should say that we were most grateful to the Committee for its report. I hope this letter has helped clarify the Government's position on these matters. I am placing a copy in the Library of the House.


LORD DAVIES OF OLDHAM