Draft Parliamentary Buildings (Restoration and Renewal) Bill Delegated Powers Memorandum By the Cabinet Office

Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the draft Parliamentary Buildings (Restoration and Renewal) Bill. It describes the purpose and content of the Bill; identifies the provisions of the Bill which confer powers to make delegated legislation; and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

Background and purpose of the Bill

- 2. The Parliamentary Buildings (Restoration and Renewal) Bill seeks to establish certain statutory bodies and outline a delivery model for the restoration and renewal of the Palace of Westminster, and (potentially) of similar works relating to other buildings within the parliamentary estate. The Bill gives effect to a motion (the "Motion"), passed by the House of Commons on 31 January 2018, and by the House of Lords on 6 February 2018, in which it was agreed that work should commence on the restoration and renewal programme, and that immediate steps should be taken to establish bodies to oversee and perform preparatory work and eventual project delivery. It is anticipated that in due course an outline business case, design proposals and a timetable for the works relating to the Palace of Westminster will be presented to Parliament for approval.
- 3. The Bill:
 - a. Establishes the Parliamentary Works Sponsor Body (the "Sponsor Body"), to have strategic oversight of the Parliamentary building works (as defined). The latter will include works for and in connection with the restoration and renewal of the Palace of Westminster, but the Bill also provides a mechanism by which further works, to other buildings in the Parliamentary Estate, may be added to the programme;
 - b. Makes provision for the Sponsor Body to form a company (the "Delivery Authority"), limited by guarantee, whose function is to carry out the works;
 - c. Makes provision as to certain matters to which the Sponsor Body and Delivery Authority must have regard;
 - d. Makes provision in relation to the composition of those bodies, and as to the procedures thereof;

- e. Requires the Sponsor Body and the Delivery Authority to enter into an agreement detailing certain matters in respect of both the works and the relationship between the two bodies;
- f. Makes provision for the expenditure of the bodies to be met out of monies provided by Parliament, and for the mechanism and processes by which such monies are sought and (where appropriate) provided; and
- g. Establishes the Parliamentary Works Estimates Commission, whose role is to review estimates submitted by the Sponsor Body and (where appropriate) to lay such estimates before Parliament.

Provisions for delegated legislation

Clause 9: Abolition of the Sponsor Body

Clause 9 creates a power to abolish the Sponsor Body, to be exercised by the Leader of the House of Commons by affirmative regulation.

- 4. Subsection 9(1) provides for the abolition of the Sponsor Body by the Leader of the House of Commons, to be effected by regulation. Subsection 9(8) provides that this will be done under the affirmative procedure. Subsection 9(2) provides that such regulations may include provision for the transfer of the functions, property, rights and liabilities of the Sponsor Body. Subsection 9(3) contains a safeguard, such that such transfer cannot be made to a person who has not consented to the transfer.
- 5. Subsection 9(5)(e) provides that regulations made under this clause may include 'provision amending or repealing any provision of this [bill]." This is a Henry VIII power. It is necessary in order to cater for the eventuality in which the Delivery Authority survives the dissolution of the Sponsor Body. Such an outcome is not certain, and cannot be certain at this stage: rather, it is dependent on the progress of the Parliamentary works programme. However, it is a possibility. In such a case, the functions of the Sponsor Body, and its role in the various other mechanisms contained in the Bill (including the funding mechanism described at Schedule 2 paragraphs 6 and 7, and in Schedule 4 in particular) will need to be reassigned, in order to permit the continued operation of the Delivery Authority.
- 6. Taken as a whole, the clause enables the efficient dissolution of the Sponsor Body, and the transfer of its functions, assets and liabilities at the end of the Parliamentary works programme (or prior to that, if it is considered that the Body has ceased to be effective).
- 7. The abolition of the Sponsor Body, the provisions as to the transfer of its functions, assets and liabilities, and the necessity or otherwise to contemplate amendment to the Bill as enacted, are meaningful powers. We also recognise the special importance of the Parliamentary works programme to members of both Houses. Accordingly, we consider that it is appropriate to provide for these powers to be exercised by affirmative procedure, such that Parliament has the opportunity to debate and scrutinise the regulations laid under the Act.

Clause 12: Commencement

Clause 12, subsection 3 creates a power, conferred on the Leader of the House of Commons to commence provisions in the Bill earlier than the statutorily defined commencement date (being established by subsection 12(2) as six months from the date of Royal Assent). No Parliamentary procedure for the laying of such regulations is specified.

- 8. Clause 12 contains a 'sunrise' clause providing for the commencement of the provisions in the Bill within six months of the date of Royal Assent.
- 9. In addition, it contains a power for the Leader of the House of Commons to commence provisions of the Bill earlier than that date, by Commencement Regulations.
- 10. Consistent with the usual practice, Commencement Regulations under this clause are not subject to any Parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by Regulations enables the provisions to be brought into force at a convenient time.

Paragraph 18, Schedule 1: transfer scheme

Paragraph 18 of Schedule 1 (the Sponsor Body) creates a power, to be exercised by the Leader of the House of Commons, providing for the transfer of relevant property, rights and liabilities of the 'shadow' Sponsor Body to the Sponsor Body.

- 11. In compliance with the Motion outlined above, a 'shadow' Sponsor Body has been established to commence the necessary design works in respect of the Palace of Westminster. The shadow Sponsor Body is staffed by employees of the House Authorities (employed by the House of Commons Commission). It is envisaged that when the statutory Sponsor Body comes into being (on commencement of the relevant provisions in the present Bill) the staff of the shadow Sponsor Body, and all of its properties, rights and liabilities will transfer to the Sponsor Body.
- 12. It is envisaged that the transfer scheme will preserve the existing terms and conditions of employment of any staff transferred from the shadow Sponsor Body to the Sponsor Body. By extending the subject matter of such transfer scheme to relevant liabilities, sub-paragraph 18(1) ensures that (for example) liability to make redundancy payments, if any, is transferred to the Sponsor Body when it is created. Sub-paragraph 18(2) defines "relevant property, rights and liabilities" as rights and liabilities held or incurred by the House of Commons Commission in connection with the restoration of the Palace of Westminster. Sub-paragraph 18(7) clarifies that references to right and liabilities include rights and liabilities relating to a contract of employment.
- 13. It is therefore envisaged that the power to create a transfer scheme shall be exercised after the creation of the statutory Sponsor Body. In order to ensure that the staff of the shadow Sponsor Body can transfer to the statutory Sponsor Body on equivalent terms and conditions of employment, sub-paragraph 18(4) provides that

the transfer scheme must make provision that is equivalent to that made in the TUPE regulations, if those regulations do not apply.

- 14. There is precedent for the delegation of the power to make a transfer scheme in the way envisaged. Section 4(1) of the Energy Act 2016 provides that "The Secretary of State may make provision for one or more transfer schemes under which persons who hold employment in the civil service of the state become employees of the OGA [...]". Section 4(2)(b) makes clear that a transfer scheme may include provision that is the same (or similar to) that made by the TUPE regulations. Like the Energy Act 2016, the Bill does not prescribe any Parliamentary procedure for exercising the power to make a staff transfer scheme, which is a proportionate approach in the context of the number of staff affected (expected not to exceed 50 employees) and the speed with which the scheme will need to come into force once the statutory Sponsor Body is established.
- 15. Delegation of the power to make a staff transfer scheme enables the relevant Minister to make a transfer scheme at the appropriate time, when the shadow Sponsor Body is fully staffed and the Sponsor Body has been created. The precise nature and scope of the transfer scheme required cannot be fully defined; it cannot be included on the face of the Bill because it is not yet known. Further, the provisions of the transfer scheme are likely to be relatively detailed. Including a similar transfer scheme in respect of the Sponsor Body's staff would lengthen and complicate the Bill in a manner both unnecessary and inappropriate.

Cabinet Office Legal Advisers

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