

# Editorial

## A Bonfire of Controls

It is sixty-five years since Lord Chief Justice Hewart railed against the "New Despotism" of expanded bureaucratic power, reflected among other things in the growth of delegated legislation over which Parliament has little control. Three years later, in 1932, the Donoughmore Committee on Ministers' Powers (set up to refute Hewart's allegations), defended delegated legislation, but said that Henry VIII clauses – so called because of their supposed resemblance to the Statute of Proclamations 1539 – empowering ministers to amend Acts of Parliament by secondary legislation, "should be abandoned in all but the most exceptional cases."

Lord Hewart's attack on bureaucratic excess has echoes in the New Right philosophies that have inspired government policy in the Thatcher-Major years – a period marked by substantial cuts in public service manpower and by continuing moves to privatise and contract out public services. One of the latest manifestations of such policy is the 70 clause Deregulation and Contracting Out Bill, published on 19 January, and proclaimed by the President of the Board of Trade as heralding "the largest bonfire of controls that has taken place in this country".

There can be little doubt that Lord Hewart would thoroughly have approved of the objective of freeing business, particularly small businesses, from unnecessary and expensive red tape. But would he have approved of this Bill? It includes 23 specific deregulation measures (drawing upon the recommendations of seven task forces of business people) – but also contains substantial enabling provisions for ministers to continue the deregulation process by

delegated legislation.

The Parliamentary machinery for scrutiny of such legislation has improved since Hewart's day. There is a Joint Committee of both Houses to undertake technical scrutiny of statutory instruments (SIs); the House of Lords now has a Delegated Powers Committee to examine the enabling powers proposed in Bills. But Parliament's opportunities for debating the substance of delegated legislation remain very limited, and any debates that do take place are on a take it or leave it basis, since SIs cannot be amended.

Anticipating constitutional criticisms of its deregulation Bill, the Government has proposed that the consequent orders shall be subject to the "affirmative" procedure, and to scrutiny by special committees of both Houses, empowered to take evidence. Even so, the Chairman of the Lords' Delegated Powers Committee, Lord Rippon, is quoted as calling the Bill "one big Henry VIII clause", and his comments have been echoed elsewhere. There have been substantive criticisms too, though the Bill has generally been welcomed by representatives of the business community.

Graham Mather, president of the European Policy Forum, has called for more and better consultation about deregulation, and has suggested setting up an independent regulatory review commission. Such proposals have merit, but they provide little comfort to those who argue that Parliament – in this and other contexts – is increasingly being marginalised by a government that has become worryingly careless about public accountability. Lord Hewart would certainly have had a lot to say about this – and about the enabling provisions in the Bill.

*Gavin Drewry*

## News

### Consultation on New Arbitration Bill

Deregulation Minister Neil Hamilton has announced proposals to streamline and simplify the law on arbitration.

The President of the Board of Trade announced in June 1992 that work on a draft Arbitration Bill, started in the private sector, was to be continued by Government. This followed a recommendation from the DAC chaired by Lord Justice Steyn. The President also announced that there would be full public consultation once work on the bill was completed. The DTI, in full co-operation and agreement with the DAC, has now produced a draft Bill and consultation document.

The Bill is intended to be a statement in statutory form of the more important principles of English law. It is also intended to be largely uncontroversial. The opportunity has been taken to introduce a number of improvements in respect of which it is thought there

will be widespread support. Also, the logical structure of the UNCITRAL Model Law on Commercial Arbitration, which is familiar to most people involved in arbitration, has been largely adopted.

The aim of the consultation exercise is to seek the views of all those with an interest in the arbitration system, particularly the practitioners and users. The consultation paper draws specific attention to a number of questions on which comment would be particularly welcomed *eg* equity clauses, separability of the arbitration agreement from the underlying contract and immunity of arbitrators. It also highlights all instances of changes in the law.

The Department has allowed five months for consultation. Responses are requested by the end of June. Copies of the paper can be obtained from:

Maureen Dodsworth, Business Law Unit, DTI Solicitor's Department, Room G21, 10-18 Victoria Street, London SW1. Tel: 071 215 3022.

Responses should be made to the same address.