HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

4th Report of Session 2019–21

Pension Schemes Bill [HL]

Correspondence: Agriculture Bill

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

(i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;

(ii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,

(b) section 7(2) or section 19 of the Localism Act 2011, or

(c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

(iii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) section 85 of the Northern Ireland Act 1998,

(b) section 17 of the Local Government Act 1999,

(c) section 9 of the Local Government Act 2000,

(d) section 98 of the Local Government Act 2003, or

(e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

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Lord Blencathra (Chair)
Baroness Browning
Lord Goddard of Stockport
Lord Haselhurst
Lord Haskel
Baroness Meacher
Lord Rowlands
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Contacts for the Delegated Powers and Regulatory Reform Committee

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Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Fourth Report

PENSION SCHEMES BILL [HL]

1. The Bill which had its Second Reading on 28 January makes provision in four areas:

   - Parts 1 and 2 establish a new type of pension scheme called the collective money purchase pension scheme.
   - Part 3 makes provision which affects the powers of the Pensions Regulator.
   - Part 4 establishes the conditions for a new kind of mechanism, called a pensions dashboard, for enabling pension scheme members to obtain information about their pensions.
   - Part 5 makes other miscellaneous changes to the law governing pension schemes.

2. The Department for Work and Pensions has provided a delegated powers memorandum. The Bill, which is substantial, contains a large number of delegated powers. The matters we wish to draw to the attention of the House are set out below. Of those, two appear to us to be cases where the scope of the power is wider than the policy it is intended to implement.[1] We have made it clear in past reports that we will always judge a power on its actual scope and not how it is said it will be exercised. Government policy can change and therefore in our view it is important that the House considers powers on the basis of what they will in fact allow, rather than on the basis of what it is said they will be used for.

Clause 6(2)–Power to change the definition of qualifying benefits in respect of a collective money purchase scheme

3. Clause 6(2) amends section 32 of the Pensions Act 2011 ("the 2011 Act"). Section 32 is contained in Part 4 of the 2011 Act which introduced a change to the definition of "money purchase benefits" for the purposes of pensions law. The regulatory framework to protect members of occupational pension schemes is built on the understanding that money purchase benefits cannot develop a funding deficit. The reason for the change made by the 2011 Act was a Supreme Court judgment which decided that certain benefits could be considered money purchase benefits even though it was possible for them to develop funding deficits.

4. Section 29 of the 2011 Act was enacted to change the definition of "money purchase benefits" to remove the uncertainty caused by the Supreme Court judgment. The purpose of section 32 was to allow further amendments to be made to the definition; it confers a regulation-making power which enables the Secretary of State to:

   > "amend for any purpose the definition of "money purchase benefit" in the Pension Schemes Act 1993, the Pensions Act 2008 or Schedule 10A to the Building Societies Act 1986".

1 See paragraphs 3 to 10 dealing with clause 6(2), and paragraphs 37 to 41 dealing with clause 124.

By virtue of section 33, regulations under section 32 can be used to amend other primary legislation and also to make retrospective provision.

5. Clause 6(2) of the Bill amends section 32 of the 2011 Act to extend the powers conferred by that section so that they include a power to amend the definition of the benefits allowed under a collective money purchase scheme.

6. In its memorandum the Department explains that, since collective money purchase benefits are a subset of money purchase benefits, it is reasonable to ensure there is a similar power to amend the definition of such benefits in clause 2, in the event that it becomes necessary in the future to make further amendments to the definition of "money purchase benefits" relying on section 32. It is also suggested that the scenario in which the power will be used is likely to be where there is an unexpected court judgment, and therefore having the power will enable the Government to react in a timely manner to protect pension scheme members.[2]

7. It seems to us that the power is framed much more broadly than the assumptions on which it is based. There is nothing to link the exercise of the power so that it can only be exercised where amendments are made to the definition of "money purchase benefits". Nor is there anything to prevent the power being exercised for wider policy reasons, and not simply as a means of responding to court judgments.

8. The power is a significant one. The definition of benefits in clause 2 is fundamental to the nature of collective money purchase benefits and schemes; and therefore any change to the clause is capable of having a significant effect on what those benefits and schemes are. There are no limits on the circumstances in which, or the purposes for which, the power may be exercised. Nor are there any limits on the nature of the amendments which may be made.

9. Also, there are two facts which in our view argue against there being a need for such a wide power:

   - The fact that the existing powers conferred by section 32 have not been exercised since they were conferred in 2011.

   - The fact that clause 2(1) already contains a power to make regulations which would allow the Secretary of State to exclude specified benefits which would otherwise fall within the definition of qualifying benefits in that clause. The reason given in the memorandum for this power is to enable benefits to be excluded if they technically (and inadvertently) meet the requirements of the clause but for any reason it would be inappropriate for them to be treated as qualifying benefits for a collective money purchase scheme. Therefore, a power already exists (albeit a more narrowly focused one) to make changes to the benefits which constitute qualifying benefits for the purpose of clause 2.

10. **In the light of these matters, we consider that the Government have not provided a sufficient justification for such a wide and significant power, and that the power as it stands is inappropriate. We consider it should be restricted so that it can only be exercised in the circumstances identified in the memorandum, namely where**

2 See paragraphs 1.16 and 1.17 of the memorandum.

doing so is considered necessary as a consequence of a change which is being made generally to the definition of money purchase benefits.

Part 1–Use of the first-time affirmative procedure

11. Part 1 of the Bill, which makes provision about collective money purchase schemes, includes a large number of delegated powers which are subject to the first-time affirmative procedure. This means that the first exercise of the regulation-making powers is subject to the affirmative resolution procedure, with all subsequent exercises of the power being subject to the negative resolution procedure.

12. The first-time affirmative procedure applies in particular to clauses 11 to 17 which deal the authorisation of collective money purchase schemes by the Pensions Regulator. Clauses 11 to 17 set out the criteria that are to be applied by the Pensions Regulator in deciding whether to authorise a scheme: for example, that the persons involved in the scheme are fit and proper persons; that the design of the scheme is sound; and that the scheme is financially sustainable. In the case of each of the authorisation criteria, powers are conferred which affect how those criteria are to be applied, and the Bill provides for the first-time affirmative procedure to apply to the exercise of those powers.

13. The Department's reasons for requiring the first-time affirmative procedure are substantially the same in each case:

- The matters governed by the regulations are significant as they will, for example, have a significant impact on how the authorisation criteria are applied by the Pensions Regulator. It is important that the first exercise of the powers is subject to a high level of Parliamentary scrutiny, because this is a new kind of pension scheme. However, in the view of the Department, subsequent exercises of the power are not expected to make fundamental changes but are likely to be limited to adjusting the regulations to take account of things such as changes in actuarial or market practice, or developments in administrative or IT systems.

- There is a precedent for the use of the first-time affirmative procedure. The Pension Schemes Act 2017 ("the 2017 Act") also set up a new kind of occupational pension scheme, the Master Trust scheme. That had similar provisions relating to authorisation etc. The equivalent provisions of the 2017 Act were also subject to the first-time affirmative procedure.

14. **The scope of the powers remains the same on the first and subsequent exercises, and therefore there is nothing in principle to prevent the changes made by subsequent exercises of a power from being as significant as the provision made on the first exercise. In the light of this, the House will wish to look carefully at the Government's arguments in each case as to why they consider it likely that changes made on subsequent exercises of a power will not be of such a nature as to require the affirmative resolution procedure to apply.**

Clause 25–Transfer rights

15. Clause 25 amends Chapter 1 of Part 4ZA of the Pension Schemes Act 1993 ("the 1993 Act") which allows a member of an occupational scheme to

transfer their accrued rights. The amendments deal with how Part 4ZA is to apply to the transfer of accrued pension rights from collective money purchase schemes.

16. Under the existing legislation, trustees are required to facilitate the transfer of benefits within six months of the date of the transfer application from the member. The same period also applies to the transfer of benefits from a collective money purchase scheme. However, clause 25(4) inserts a new provision which will allow the six-month period to be extended in the case of collective money purchase schemes by regulations made by the Secretary of State.

17. Clause 25(5) inserts new section 99A into Chapter 1 of Part 4ZA of the 1993 Act. The new section will ensure that, where a member of a collective money purchase scheme applies for a transfer of benefits, the trustees cannot enter into agreement for the transfer of benefits earlier than three weeks after the date on which they notify the member of the value of the benefits, unless the member consents in writing. The purpose of this provision is to give the member a "cooling-off" period before the trustees take action to facilitate the transfer. Section 99A also includes a regulation-making power under which the Secretary of State can change the length of the cooling-off period.

18. Both sets of regulation-making powers are subject to the negative resolution procedure. This is despite the fact that they are in substance powers to amend primary legislation (because their effect is to amend periods which are otherwise specified on the face of the 1993 Act). The reasons for providing for the negative resolution procedure to apply are set out in paragraph 1.108 of the Department's memorandum:

    - The fact that the Secretary of State will work closely with industry and the Regulator before exercising the powers.

    - The fact that most other regulations under Part 4ZA of the 1993 Act are also subject to the negative procedure.

19. **We take the view that these are not sufficient reasons for applying the negative resolution procedure to the scrutiny of what are in essence Henry VIII powers, and accordingly we recommend that, in the absence of a more convincing justification, the affirmative resolution procedure should apply instead.**

Clause 28–Power to designate significant events

20. Clause 28 imposes a duty on certain persons (for example, a trustee or employer) to notify the Pensions Regulator where a "significant event" has occurred in relation to a collective money purchase scheme. In its memorandum,[3] the Department explains that certain events may impact on a scheme's authorised status, and the purpose of this clause is to ensure that these events are reported to the Pensions Regulator as soon as reasonably practicable.

21. Nothing is said in clause 28 about what might or might not constitute a significant event for the purposes of the clause. Instead, the power is given to the Secretary of State to specify in regulations the events that constitute

3 See paragraph 1.115.

significant events for the purposes of the clause. No limits are placed on the kinds of event which might be specified in the regulations.

22. It seems to us that what constitutes a significant event for the purposes of clause 28 is fundamental to the nature and scope of the duty imposed by that clause on trustees and employers etc. The memorandum[4] explains that the list of significant events will be developed in consultation with the Regulator and industry stakeholders. But nothing is said to explain why it is necessary or appropriate to wait until the legislation has been enacted before carrying out the consultation. The point is made that changes may need to be made to the list of significant events to respond to changes in the pensions market as collective money purchase schemes develop. But the fact that there may need to be a power to make changes, does not explain why it is not possible to specify on the face of the legislation the significant events which are to be the subject of the notification duty when the legislation first comes into force.

23. We accept the point made by the Department that the approach adopted here is consistent with the approach which has been adopted in previous Pensions Acts, such as the Pension Schemes Act 2017 and the Pensions Act 2004. **However, we recommend that the House seeks further explanation from the Minister as to why it is not feasible to set out on the face of the Bill the events that are to constitute significant events for the purposes of clause 28, even if this were to be coupled with a power to make changes in the future to the list of events.**

Clause 47–Power to extend the definition of qualifying schemes

24. The Bill requires all collective money purchase schemes to be set up under a trust by a single employer or a group of connected employers. Similarly, the Bill also requires a scheme to be used only by a single employer or by two or more connected employers. These limitations are set out in clause 3(2) and (3).

25. Clause 47(1) confers a power on the Secretary of State to remove these restrictions by regulations. This would then allow collective money purchase schemes to be established by a body which was not the employer of members of the scheme; and for the scheme to apply to more than one employer, without there being any connection between the employers.

26. The Department states[5] that the single employer limitation imposed by clause 3:

> "… is necessary as a safeguard until the legal requirements for other kinds of collective money purchase scheme structures are better understood. For example, commercial Master Trust providers are interested in operating collective money purchase schemes, but this work is at a very early stage of development."

This suggests that the Government are minded to allow multiple-employer collective money purchase schemes to be offered, but that they have not yet worked out how such schemes should be regulated. The proposal therefore is to extend collective money purchase schemes to multiple employers only once the Government have been able to decide on the appropriate regulatory structure.

4 See paragraph 1.121.
5 See paragraph 1.194 of the memorandum.

27. The fact that the Government have not yet worked out how multiple-employer collective money purchase schemes should be regulated has led to very wide powers being conferred by clause 47(3) to (5). Subsection (3) confers a power on the Secretary of State to make further provision in regulations about multiple-employer collective money purchase schemes. Although specific things are mentioned in subsection (3) as to what the powers may be used for. These are not exhaustive of the things which may be dealt in the regulations. **The power is in effect a power to change, and add to, the provisions of Part 1 in any way that the Secretary of State sees fit in making provision about multiple-employer collective money purchase schemes.** By virtue of subsection (5), it includes a power to modify, amend or repeal any provision of Part 1 itself, as well as a power to modify, amend or repeal any provision of any other enactment (primary or secondary).

28. The fact that the Bill currently prohibits multiple-employer collective money purchase schemes suggests that such schemes may give rise to significantly different regulatory issues from those presented by single employer collective money purchase schemes which are currently allowed under the Bill. This is also supported by the fact that clause 47(3) to (5) gives the Secretary of State such wide powers to make changes to the provisions that govern single employer schemes.

29. **Given this background, we consider it is inappropriate to leave the provisions for regulating multiple-employer collective money purchase scheme to subordinate legislation; and, therefore, that the delegation of powers by clause 47 is inappropriate.**

Paragraph 2 of Schedule 10

30. Schedule 10 to the Bill amends Part 3 of the Pensions Act 2004 ("the 2004 Act"). That Part requires certain kinds of occupational pension schemes (primarily defined benefit schemes) to have sufficient and appropriate assets to cover their liabilities. Schedule 10 introduces new requirements on trustees and managers of such schemes: a requirement to determine a strategy for ensuring that pensions and other benefits under the scheme can be provided over the long term, and a requirement to prepare a statement of that strategy.

31. The provisions relating to the statement of strategy are contained in a new section 221B of the 2004 Act which is inserted by paragraph 2 of Schedule 10. Section 221B(6) requires the statement of strategy which is prepared for a trust scheme to be signed on behalf of the trustees by a person who is the chair of the trustees, and who meets such other conditions as may be prescribed in regulations made by the Secretary of State. Subsection (7) goes on to provide that, where subsection (6) cannot be complied with because the trustees of a trust scheme do not have a chair, they must appoint one.

32. Therefore, the effect of this provision, as well as requiring the statement of strategy to be signed on behalf of the trustees by the chair of trustees, is to impose a new requirement on trust schemes to have a chair of trustees and for that person to meet certain conditions which are to be set out in regulations made by the Secretary of State.

33. In its memorandum the Department does not explain the reasons for including what appears on the face of it to be a significant new provision affecting defined benefit schemes which are subject to a trust. Paragraph 1.441 simply

states that subsection (6)(b) provides a power for the Secretary of State to prescribe requirements regarding who is able to hold the role of chair of the trustees of a defined benefit pension scheme. Nothing is said in the memorandum to explain why it is not possible to specify the conditions on the face of the legislation, or why it is not possible or appropriate to limit the kinds of conditions which might be imposed using this power.

34. **The Government have failed to explain why there is a need for a power to impose conditions on who may be the chair of trustees of a defined benefit scheme. In the absence of any explanation, we consider the delegation of power to be inappropriate particularly given the apparent significance of the power being conferred.**

35. Regulations under section 221B(6)(b) are subject to the negative resolution procedure. The memorandum states:

> "It is considered that the negative resolution procedure is appropriate because these will be technical requirements which are not expected to be controversial."

There is nothing in the nature of the provision itself to suggest that the conditions will be "technical requirements". The scope of the power is such that on the face of it anything could be specified as a condition which has to be met by the chair (for example, having specified professional experience as an accountant or a lawyer or being independent from any of the employers who are connected to the scheme). The conditions which are imposed may have a significant impact on who is allowed to be the chair of a defined benefits scheme, and presumably could have significant implications for particular schemes in finding an appropriate person to carry out the role, particularly if none of the existing trustees qualify.

36. **We take the view that, if the power is retained, it should be subject to the affirmative resolution procedure.**

Clause 124–Powers to specify conditions which have to be met before pension rights can be transferred

37. Clause 124 amends Parts 4ZA and 4A of the 1993 Act which confer a right on members of pension schemes to transfer their accrued rights. In particular, it amends sections 95 and 101F by inserting provisions which will prevent trustees or managers of a relevant pension scheme from transferring a member's accrued rights unless conditions prescribed in regulations are met.

38. The amending legislation mentions specific things in respect of which conditions may be imposed: conditions about a member's employment or place of residence and providing evidence about those things. But it is made explicit that these are not exhaustive, and the conditions may relate to other things with no limit on what those other things might be.

39. In justifying the need to specify the conditions in regulations rather than on the face of the primary legislation, the Department in its memorandum states.[6]

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6 See paragraph 1.466.

> "Fraudsters will continually seek out new opportunities to take advantage of their victims. The models and mechanisms used will likely be adapted to circumvent the protections that are put in place to better protect members from pension scams, which can put their life savings at risk. Government believes it is necessary that requirements remain flexible to counter this evolving threat to pension savers."

40. It is notable however that there is nothing on the face of the primary legislation to limit the power to impose conditions so that their purpose is limited to protecting members from scams. This is therefore a case where the scope of the power goes wider than the stated purpose for which it is being taken.

41. **Having regard to the significance of the power which allows the Government to limit the circumstances in which a member of a pension scheme would be able to transfer accrued rights, we consider it is inappropriate for the power to be capable of being exercised for purposes other than those for which it is said to be intended. We recommend the power should be limited so that it can only be exercised where the Minister considers doing so is necessary to protect the interests of pension scheme members.**

42. Regulations under the provisions to be inserted into sections 95 and 101F of the 1993 Act will be subject to the negative resolution procedure. The justification given in the memorandum is that "this aligns with the transfer procedural powers in existing legislation". **We do not consider that the negative resolution procedure offers an appropriate level of Parliamentary scrutiny, given the importance and width of the power. Accordingly, we recommend that the power is made subject to the affirmative resolution procedure, particularly if it is retained in its current form with nothing to limit the purposes for which conditions may be imposed in exercise of the powers.**

Northern Ireland provisions

43. The extent of each of the provisions referred to above is limited to England and Wales and Scotland. In each case the Bill includes separate but identical provision for Northern Ireland:

Provision	Northern Ireland equivalent
Clause 6(2)	Clause 57(2)
First-time affirmative: clauses 11 to 17, 19, 20 and 28	Clauses 62 to 68, 70, 71 and 79
Clause 25	Clause 76
Clause 28	Clause 79
Clause 47	Clause 98
Paragraph 2 of Schedule 10	Paragraph 2 of Schedule 11
Clause 124	Paragraph 12 of Schedule 11
Clause 6(2)	Clause 57(2)

In our view, the same issues arise with the Northern Ireland provisions as arise with the England and Wales and Scotland provisions, and

accordingly our recommendations should be read as applying to the Northern Ireland provisions as well.

CORRESPONDENCE: AGRICULTURE BILL

44. On 15 January 2020, the Government introduced the Agriculture Bill in the House of Commons. The Committee has received a letter from George Eustice MP and Lord Gardiner of Kimble, Ministers at the Department for Environment, Food and Rural Affairs, on the introduction of this Bill. The letter comments on the recommendations the Committee made in its 34th Report of Session 2017–19[7]concerning the Agriculture Bill introduced in that session and has been published at Appendix 1.

7 *34th Report*, Session 2017–19 (HL Paper 194).

APPENDIX 1: CORRESPONDENCE ON THE INTRODUCTION OF THE AGRICULTURE BILL

Letter from George Eustice MP, Minister of State at the Department for Environment, Food and Rural Affairs, and Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

The Government introduced its Agriculture Bill to the House of Commons on the 15th of January 2020.

The Bill will enable us to replace the EU's Common Agricultural Policy (CAP) with a modern system of farm support suited to domestic needs.

The Committee had previously scrutinised the Agriculture Bill in its 34th Report of Session 2017–19 published on 17 October 2018 wherein the Committee raised several concerns. The Department has carefully considered the Committee's recommendations and wishes to highlight some important changes to the Bill being introduced in the 2019–2020 session. This letter should be read alongside the Committee's 2018 report, noting that clause numbers will have changed.

The Department notes the Committee's concerns about the level of detail offered in relation to the new agriculture system that will replace the CAP. The new agriculture system will be designed closely with stakeholders over the agricultural transition period lasting seven years. The Agriculture Bill will be accompanied by an updated policy statement on what the Department expects from the reformed agricultural system which will be based on spending public money for the delivery of public goods. The Department has reflected on the Committee's views and agrees that Parliament should have greater opportunity to scrutinise the Government's actions and progress during the agricultural transition and has therefore included additional duties on Ministers. In relation to Section 1, the Secretary of State must:

(i) prepare a document giving information about the expected use of powers conferred by section 1 setting out the Government's strategic priorities (clause 4);

(ii) prepare a report about the financial assistance given during each financial year (clause 5); and,

(iii) prepare a report about the impact and effectiveness of each financial assistance scheme or other financial assistance given when appropriate (clause 6).

These documents must be laid before Parliament for scrutiny.

The Committee also raised concerns in relation to the number of powers versus duties in the Bill. Together with those listed above, further duties placed on the Secretary of State include:

(i) to have regard to the need to encourage the production of food in an environmentally sustainable way (clause 1(4));

(ii) to report on food security at least once every five years and which must be laid in Parliament for scrutiny (clause 17); and,

(iii) to publish draft requirements in relation to the collection of data (clause 24).

As a general point, the Committee has remarked that the Agriculture Bill contains powers that are exercisable indefinitely and without sunset clauses and which may extend to the creation of criminal offences. The Department wishes to notify the Committee that it has removed the ability to create criminal offences in the Bill. Turning to the exercising of powers, the Department maintains that any powers to amend retained EU legislation under clauses 9, 10, 14, 15 and 16 are inextricably linked to the lifespan of the relevant EU schemes to which those clauses specifically refer. A sunset provision has therefore not been included as these clauses will naturally cease at the close of those schemes. Likewise, clauses 11, 12 and 13 sunset following the natural cession of the agricultural transition period set out under clause 8.

The Committee also raised the matter of consultation in their report. The Department would like to take this opportunity to assure the Committee that it is committed to consulting prior to making changes across several areas of the Bill. The Department has already have engaged in consultation concerning the modification of retained EU schemes and will continue to do so prior to making any amendments. This will ensure that proper account is taken of the impact of the proposed modifications on recipients.

The Committee further raised concerns about particular powers included in the Bill. The Department considers these here in turn.

Monetary Penalties

The Committee noted that monetary penalties could be applied under several clauses of the Bill. In the Bill before the House of Commons these are now clauses 3(2)(g), 26(4)(a), 35(3)(e) and 38(2)(e).

The Committee also identified that clause 23(4)(d) (now clause 29) regarding recognised organisations who benefit from certain competition exemptions, also contained a provision to impose monetary penalties. The Committee is invited to note that this power has been removed.

These clauses confer powers on the Secretary of State to make regulations about monetary penalties for the following purposes:

(a) checking, enforcing and monitoring in connection with the financial assistance provisions of the Bill (clause 3(2)(g));

(b) for non-compliance with data collection requirements (clause 26(4)(a)); and,

(c) in relation to marketing standards (clause 35(3)(e)) and carcass classification (clause 38(2)(e)).

The Committee had asked why further details about the imposition of monetary penalties in regulations under clause 26(4)(a) should not also extend to clauses 3(2)(g), 35(3)(e) and 38(2)(e).

In considering the use of monetary penalties in other instances in the Bill, we invite the Committee to note that while these remaining provisions impose a monetary penalty, the rationale behind the penalty will be different in each instance.

Penalties made under Clause 3(2)(g) will specifically apply for enforcing the conditions attached to payments made under clause 1. The Department has provided further detail to the provision to make it clear that regulations made under this power may impose penalties calculated by reference to the amount of financial assistance that is given. This could, for example, take the form of a penalty calculated as a percentage of the sum received.

The monetary penalties that can be created in regulation made under clauses 35(3)(e) and 36(2)(e) in relation to Marketing Standards and Carcass Classification respectively are intended for a different purpose. These penalties will ensure that the new marketing standards regime can continue as the existing regime and that existing penalties can be replicated. As no payments are made under these clauses, the monetary penalty is intended as a fine to dissuade non-compliance. Regulations made under this provision can specify how these penalties will be applied.

As with clauses 35(3)(e) and 38(2)(e), the monetary penalties created in regulations under clause 26(4)(a) are intended as a fine to dissuade non-compliance. To maximise effectiveness of the deterrent of the fine, the Secretary of State has the power to create regulations that set out that the penalty could be calculated by reference to profit, income or turnover. As there are economically significant players within the agri-food supply chain, the Department considers that a fixed monetary penalty would be an insufficient lever to promote compliance.

The Department recognises that it would not be appropriate for the same penalty making powers to apply in all instances.

Basic payment and financial support

The Committee raised concerns in their report about powers to simplify and improve retained direct EU legislation relating to the basic payment scheme, the financing, management and monitoring of the CAP, and the support for rural development.

The Committee considered that the test was inappropriate as it was drafted too widely and was overly subjective and unclear.

The test had been introduced on the basis that it provided sufficient scope for making a range of modifications to retained CAP legislation, enabling us to move away from the CAP and otherwise make for the better operation of the schemes. For example, it was intended to allow us to reduce burdens on farmers, land managers and other beneficiaries and remove or change provisions which were not appropriate in a domestic context.

During the intervening period the Department has given close consideration to your comments. In relation to clauses 9 and 14, the drafting has been clarified and more detail has been added about the purposes for about which the powers may be used. In short, the Secretary of State must be satisfied that changes would serve one or more of the purposes listed. For example, for clause 9 the Secretary of State must be satisfied that the change will simplify the administration of the scheme or otherwise make its operation more efficient or effective; will remove provisions which are spent or of no practical use; will remove or reduce overall burdens on people, applying for, or entitled to, direct payments under the scheme or otherwise improving the way that the scheme operates in relation to them; will secure that any sanction or penalty imposed is appropriate and proportionate; or will limit the application of the scheme to land in England. There are similar

purposes specified in clause 14. The Delegated Powers Memorandum gives in each case, for Clauses 9 and 14, examples of the use for which the power may be exercised.

Regarding clause 16, the Department has now specified the purposes to which modifications to retained EU law will be made. These include making it easier to transition current rural development agreements into the financial assistance schemes made under clause 1 and extending the period of the rural development programme in England.

Marketing Standards, Carcass Classification and Organics

The Department wishes to provide further detail for the Committee on why it has taken and how it intends to use the powers under clauses 35 and 38 which relate to marketing standards and carcass classification respectively.

Under the terms of the European Union (Withdrawal) Act 2018, relevant EU marketing standards and carcass classification legislation will become retained EU law. The Committee noted that changes to such law made by regulations under section 8 of that Act are limited by the need to show that changes are appropriate to address deficiencies in that law arising from the UK's withdrawal from the EU.

Section 8 of the Withdrawal Act would not allow for changes to be made to the retained legislation where deficiencies were not the result of the UK's withdrawal from the EU. Marketing standards is a dynamic area of law and must be responsive to changes in the market, production methods and in consumer demands and priorities. Clause 35 will ensure that the law can be amended to effectively respond to changes relating to the nature of the relevant markets.

The Department has also considered the matter of organic products regulation (clauses 36 and 37) which similarly set standards in the organics market.

In relation to organics legislation section 8 of the Withdrawal Act would have the same effect and would mean the Department could not amend legislation as trading circumstances change. For example, it would not be able to add or remove names of third countries from lists of recognition, which would limit us in our ability to expand trade or minimise risks of fraud.

It is not the Government's intention to use these provisions to impose additional or excessive burden on farmers or other actors in the food supply chain. Instead, the Department will use these powers to allow the Secretary of State to respond to changes in the market, and in respect of organics legislation, to also enable the sector to grow.

Changes to Procedure

The Department has agreed with the Committee's recommendation that regulations made concerning fair dealing obligations of business purchasers of agricultural products should be subject to the affirmative procedure.

Likewise, while the Department maintains that the use of the power will be technical in . nature, it has agreed the Committee's recommendation that clause 35(5) relating to amending Schedule 4 on marketing standards should also be subject to the affirmative procedure.

Final Remarks

The Department is grateful for the improvements the Committee suggested in its first scrutiny report. It looks forward to the Committee's consideration of the Agriculture Bill and will continue to consider carefully its recommendations.

We thank the Committee again for their valuable scrutiny of the Agriculture Bill.

20 January 2020

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at https://www.parliament.uk/hlregister. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 5 February 2020 Members declared no interests.

Attendance

The meeting was attended by Baroness Andrews, Lord Blencathra, Lord Goddard of Stockport, Lord Haselhurst, Lord Rowlands, Lord Thurlow, and Lord Tope.