



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

21st Report of Session 2019–21

Domestic Abuse Bill

Parliamentary

Constituencies Bill

Trade Bill

Ordered to be printed 29 July 2020 and published 29 July 2020

Published by the Authority of the House of Lords

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:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chair)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Haskel](#)

[Baroness Meacher](#)

[Lord Rowlands](#)

[Lord Thurlow](#)

[Lord Tope](#)

Registered 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.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

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.

Twenty First Report

DOMESTIC ABUSE BILL

1. The Domestic Abuse Bill was introduced into the House of Lords on 7 July 2020. Among other measures, the Bill establishes the office of Domestic Abuse Commissioner; it provides for a new domestic abuse protection notice and a new domestic abuse protection order; and it affords special protection for victims and witnesses in court proceedings. The Bill is accompanied by a Delegated Powers Memorandum (“the Memorandum”) produced by the Home Office.¹

2. We draw attention to one point in three places where it occurs.

Clause 63: new section 31R(5) of the Matrimonial and Family Proceedings Act 1984

3. Clause 63 inserts a new section 31R into the Matrimonial and Family Proceedings Act 1984 (“the 1984 Act”), prohibiting cross-examination in person by a party to family proceedings where that person has been convicted of, given a caution for, or is charged with, a “specified offence”, where the witness to be cross-examined is the victim, or alleged victim, of that offence. In turn, the victim or alleged victim may not cross-examine the perpetrator or alleged perpetrator.

4. New section 31R(5) defines a “specified offence” to mean an offence specified, or of a description specified, in regulations made by the Lord Chancellor. The Government’s reasons why the Bill should not specify on its face the offences that will trigger the prohibition against cross-examination in person are as follows:

“... in order to keep the details of the specified offences comprehensive and up to date, it is appropriate to set them out in regulations rather than in primary legislation, which would be harder to amend and keep current.”²

5. However, a comprehensive list can be as easily included in primary legislation as in secondary legislation—except where the Government have not yet made up their mind at the time of the Bill’s enactment. In this case, the Government have made up their mind. They propose to:

“... broadly mirror the domestic violence and child abuse offences which are set out in a non-statutory list published by the Lord Chancellor under section 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and referred to in Schedules 1 and 2 to the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098), as amended”.³

6. A comprehensive list set out in primary legislation can—where it is necessary to do so—be kept up to date by a power to amend the list by regulations

1 Delegated Powers Memorandum, Home Office: <https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124-DPM.pdf>.

2 Memorandum, para 104.

3 *Ibid.*, para 103.

made by statutory instrument. Since this would be a Henry VIII power, we would expect any such regulations to be made by the affirmative procedure.

7. **We recommend that, instead of the prohibition against cross-examination being a matter entirely for regulations made by the negative procedure, the Bill should set out the list of offences that the Government have in mind (Memorandum, paragraph 103) with a power to amend the list by regulations made by the affirmative procedure.** This would achieve the Government's aims of combining clarity and transparency with flexibility.

Clause 63: new section 31S(4) of the 1984 Act

8. New section 31S of the 1984 Act would prohibit cross-examination in person by a party to family proceedings where that person is someone against whom a protective injunction is in force, where the witness to be cross-examined is the person protected by the injunction. In turn, the person protected by the injunction may not cross-examine the person who is subject to the injunction.
9. New section 31S(4) defines a "protective injunction" to mean an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor under the negative procedure. Once again, the Government consider that, in order to keep the details of protective injunctions comprehensive and up to date, it is appropriate to set them out in regulations rather than in primary legislation, which would be harder to amend and keep current.⁴
10. **For the reasons given at paragraphs 5 to 7, we recommend that, instead of the prohibition against cross-examination being a matter entirely for regulations made by the negative procedure, the Bill should set out the list of protective injunctions that the Government have in mind (Memorandum, paragraph 109) with a power to amend the list by regulations made by the affirmative procedure.** As before, this would combine clarity and transparency with flexibility.

Clause 63: new section 31T(3) of the 1984 Act

11. New section 31T of the 1984 Act would prohibit cross-examination in person by a party to family proceedings where there is "specified evidence" that the party has perpetrated domestic abuse (as defined in clause 1 of the Bill) against a witness in the proceedings (or vice versa). "Specified evidence" means evidence specified, or of a description specified, in regulations made by the Lord Chancellor.
12. As with "specified offences" under new section 31R(5) and "protective injunctions" under new section 31S(4) of the 1984 Act, the Government consider that, in order to keep the details of specified evidence comprehensive, up to date and—in addition—consistent where appropriate with the legal aid regime, it is appropriate to set them out in regulations, rather than in primary legislation, which would be harder to amend and keep current.
13. **For the reasons given earlier, we recommend that, instead of the prohibition against cross-examination being a matter entirely for regulations made by the negative procedure, the Bill should set out the list of specified evidence that the Government have in mind**

⁴ *Ibid.*, para 110.

(Memorandum, paragraph 117) with a power to amend the list by regulations made by the affirmative procedure. As before, this would combine clarity and transparency with flexibility.

PARLIAMENTARY CONSTITUENCIES BILL

14. There is nothing in this Bill which we would wish to draw to the attention of the House.

TRADE BILL

15. There is nothing in this Bill which we would wish to draw to the attention of the House.

APPENDIX 1: 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 29 July 2020 Members declared no interests.

Attendance

The meeting was attended by Baroness Andrews, Lord Blencathra, Baroness Browning, Lord Haskel, Baroness Meacher, Lord Rowlands, Lord Thurlow and Lord Tope.