



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

5th Report of Session 2019–21

Birmingham Commonwealth Games Bill [HL]

Divorce, Dissolution and Separation Bill [HL]

NHS Funding Bill

Terrorist Offenders (Restriction of Early Release) 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:

Baroness Andrews

Lord Blencathra (Chair)

Baroness Browning

Lord Goddard of Stockport

Lord Haselhurst

Lord Haskel

Baroness Meacher

Lord Rowlands

Lord Thurlow

Lord Tope

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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 hlddelegatedpowers@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 u

Fifth Report

BIRMINGHAM COMMONWEALTH GAMES BILL [HL]

1. The Bill, which had its Second Reading on 3 February, contains a number of measures intended to support the delivery of the 2022 Commonwealth Games which are due to be held predominantly in Birmingham and venues across the West Midlands in July and August of 2022.
2. The Department for Digital, Culture, Media and Sport has provided a delegated powers memorandum. The Bill is to a very large extent the same as the bill of the same name which was introduced during the 2017–19 Session, and which was considered by this Committee in its 58th Report of that Session.¹ In that Report, we drew attention to four provisions. This Report deals with three of those. In the case of the other provision, the Government accepted our recommendation.

Clause 13—Regulations concerning advertising in Games locations

3. Clause 13 makes it an offence for a person to carry out Games location advertising. The provision relies on a number of delegated powers all of which are subject to the negative resolution procedure. Clause 13 is substantially the same as clause 12 in the earlier Bill. In our Report on that Bill we said the following about the powers in clause 12:

“2. Clause 12(1) makes it an offence for a person to carry out Games location advertising. The expression “Games location advertising” is defined in subsection (2) to mean the doing of something in, or in the vicinity of, a specified Games location at any time during a specified period, where the thing is being done wholly or partly for the purpose of promoting a product, service or business specifically to members of the public who are either in, or in the vicinity of, the Games location, or watching or listening to a broadcast of a Games event.

3. Where “specified” is used in clause 12(2), it means specified in regulations made by the Secretary of State. Accordingly, clause 12 confers power on the Secretary of State to make regulations specifying the Games locations to which the advertising offence applies and also the period during which the offence will apply. In the latter case subsection (3) sets out the maximum limits for the period: it cannot start earlier than 21 days before the Games begin, and it cannot end more than five days after the Games finish.

4. Clause 12(4) confers further regulation-making powers in connection with the advertising offence. It allows the Secretary of State to make provision as to when a person is, or is not, to be treated as doing something or being in, or in the vicinity of, a Games location.

5. The Department’s reasons for taking the powers in clause 12 are set out in paragraphs 20 to 25 of the memorandum. The primary reason is flexibility. Operational planning for the Games is still underway, and it is not yet known where all the Games locations will be or when they

¹ [58th Report](#), Session 2017-19 (HL Paper 391).

will be needed for Games events. Leaving to regulations the detail of the specific Games locations, and the period during which the advertising offence will apply, will allow the offence to be shaped so that it does not go beyond the minimum necessary.

6. Regulations under clause 12 are subject to the negative resolution procedure. The Department argues this is appropriate because the powers are narrowly drawn.² They are limited to dealing with matters of detail; namely, the specific dates, times and areas for which advertising will be restricted. The power is further restricted because the limit on the period in clause 12(3) ensures that the advertising provisions, including the provision made by the regulations, will only operate during a relatively short period of time. Also, the negative procedure is appropriate because it would allow urgent action to be taken to accommodate last minute changes in the schedule for the Games.

7. We do not agree that the powers are narrowly drawn:

- The powers will allow Ministers to determine the places where the ban will apply. Although the power is limited to Games locations, that term is given a wide meaning and is not limited to places used for Games events but also includes other places used in connection with the Games.
- Through clause 12(4), the regulations will be able to determine what is meant by a person doing something or being in the vicinity of a Games location. The expression “in the vicinity of” is capable of a broad range of meanings, and therefore it gives Ministers a broad discretion in determining the extent of the areas around Games locations which are to be covered by the advertising offence. Also, the powers will allow actions, which might not themselves be done in the vicinity of a Games location, to be treated as if they had been done in a Games location.

8. Not only are the powers wide but their exercise is also liable to have a significant impact because the offence covers such a wide range of activities. The definition of advertising in clause 12 is very broad. It covers all forms of advertising. The only restriction is that it is done wholly or partly for the purpose of promoting a product, service or business specifically to members of the public who are in, or in the vicinity of, a Games location. It would therefore cover advertising of any services, products etc. aimed at persons in the relevant area irrespective of whether or not the thing being advertised had any connection with the Games.

9. We acknowledge that the limit placed on the period for which the advertising offence may apply mitigates against the width of the powers. However, we are not convinced that this is sufficient to make the negative procedure appropriate.

10. One of the points made by the Department is that the negative procedure will provide the flexibility to accommodate the fact that the schedule for the Games is not yet known and may be subject to last minute changes. However, it seems to us that this could be addressed in the same way that this issue was addressed in the London Olympic

Games and Paralympic Games Act 2006. Initially, the advertising regulations under that Act were subject to the affirmative procedure in all cases. However, changes were subsequently made in the London Olympic Games and Paralympic Games (Amendment) Act 2011, which allowed the negative procedure to apply where the Secretary of State considered there was an urgent need for the regulations to be made without a draft first having been approved by Parliament. We consider the same approach should be adopted here.

11. Accordingly, we recommend that any exercise of powers under clause 12 should be subject to the affirmative procedure, unless the Secretary of State certifies that by reason of urgency the negative procedure should apply instead.”

4. We have considered the Government’s response to our Report, and also what is said in the memorandum about why the Government still consider the negative resolution procedure to be appropriate. While we acknowledge that the equivalent powers conferred under the legislation for the London Olympic Games and the Glasgow Commonwealth Games may have been wider, the powers conferred by clause 13 must still nevertheless be considered on their own merits. Nothing which the Government have said leads us to believe that we were wrong in our earlier assessment of the scope of the powers and their significance.
5. **Accordingly, we remain of the view that any exercise of powers under (now) clause 13 should be subject to the affirmative procedure, unless the Secretary of State certifies that by reason of urgency the negative procedure should apply instead. In recommending that the negative procedure is appropriate for urgent exercises of the powers, we are mindful of the fact that, in this case exceptionally, requiring the draft affirmative procedure to apply would not be practical in circumstances where it was necessary to make the change to the legislation days before the Games were to take place.**

Clause 16—Regulations concerning trading in Games locations

6. Clause 16 makes it an offence for a person to carry out Games Location trading. Clause 16 is substantially the same as clause 15 in the earlier Bill. In our earlier Report we said the following about the powers in clause 15:

“12. Clause 15 makes provision in relation to trading in Games locations which is very similar to that made by clause 12 for advertising. It makes it an offence for a person to carry out Games Location trading, with the definition of “Games location trading” having many similarities to the definition of “Games location advertising”. The definition provides for the offence to apply to trading in, or in the vicinity of, Games locations specified in regulations and during a period specified in the regulations, with the same limit on the length of that period. Clause 15 also contains a provision, equivalent to clause 12(4), which allows the regulations to make provision as to when a person is, or is not, to be treated as doing something or being in, or in the vicinity of, a Games location.

13. In our view, similar considerations apply here as apply to clause 12 and the provisions on advertising. The range of matters caught by the trading offence is very broad and is not limited to activities connected to the Games. Also, as with the advertising regulations, wide powers are

conferred on the Minister to determine the places to which the trading ban will apply and the extent of the areas over which the ban will apply.

14. Accordingly, we recommend that any exercise of powers under clause 15 should be subject to the affirmative procedure, unless the Secretary of State certifies that by reason of urgency the negative procedure should apply instead.”

7. **We remain of the same view about this clause, and accordingly we recommend that any exercise of powers under clause 16 should be subject to the affirmative procedure, unless the Secretary of State certifies that by reason of urgency the negative procedure should apply.**

Clause 25—Power of Secretary of State to direct a person to prepare a Games transport plan

8. Clause 25 confers a power on the Secretary of State to direct a combined authority or a local authority in England (“the directed authority”) to prepare a Games transport plan. The Department states in paragraph 61 of the memorandum that the purpose of the plan is:

“to facilitate and deliver integrated “Games time” transport planning and operations in a clear and practical way. The purpose of such a Plan would be to set out a strategic approach to the planning and coordination of transport to support the Games, covering the transportation of spectators, athletes and the Games Family, whilst at the same ensuring that any disruption to everyday users of the relevant transport networks is kept to a minimum.”

By virtue of clause 25(6), each local traffic authority for a road affected by the plan is under a duty to exercise their functions with a view to securing the implementation of the plan.

9. The functions of the directed authority are not limited to preparing a Games transport plan but also include the power to make traffic regulation orders etc. under section 14 of the Road Traffic Regulation Act 1984 (which allows a traffic authority temporarily to restrict or prohibit the use of a road). Clause 26 modifies section 14 to allow action to be taken under that section for the purposes of implementing a Games transport plan, and for the purposes of facilitating transport services in connection with the Games and travel by persons connected with the Games. Clause 27 allows the directed person to take action under section 14 in respect of a road as if that person were the local traffic authority for the road concerned (although any such action can only be taken with the consent of the local traffic authority for the road).
10. In the earlier Bill the equivalent power was to direct any person to be responsible for the Games transport plan; in other words, it was not limited to a local authority. In our earlier Report, we noted that nothing was said in the memorandum to explain why it was not possible to specify on the face of the primary legislation the body which is to exercise the functions of the directed person. This was in contrast to the legislation for the London Olympic Games and the Glasgow Commonwealth Games where the body responsible for the Games transport plan was specified on the face of the primary legislation. We expressed the view that the delegation was inappropriate in the absence

of any explanation justifying why it was necessary in this case to leave it wholly at large who was to be responsible for the Games transport plan.

11. In response to our Report, the Minister acknowledged the difference in approach to that in respect of the London Olympic Games and the Glasgow Commonwealth Games. The Minister said:²

“We do believe however, that the proposed approach is appropriate for Birmingham 2022. Local Games transport partners are already leading and working together on transport preparations and planning for the Games. Their approach reflects the transport expertise that already exists across Birmingham and the region and, importantly, the reduced timescale to deliver these Games. The views of local partners will strongly factor into the Secretary of State’s decision on who will formally be directed to prepare the plan.

The Minister went on:

“I have however, carefully considered the issues raised in the report of the DPRRC and recognise the concerns. We have therefore brought forward an amendment that the Secretary of State would be enabled to direct only a ‘local authority or combined authority’ to produce a Games Transport Plan, rather than ‘a person’”.

12. We accept this explanation as to why it is appropriate to provide for a local authority or combined authority to be the person responsible for the Games transport plan and why it is not feasible at this stage to specify which authority that should be. **However, given the significance of the functions conferred on the relevant authority and the fact that under earlier legislation the designation of the authority was on the face of the primary legislation, we consider that the designation should be subject to Parliamentary scrutiny, with the negative procedure offering an appropriate level of scrutiny.**

2 [60th Report](#), Session 2017-19 (HL Paper 414).

DIVORCE, DISSOLUTION AND SEPARATION BILL [HL]

Introduction

13. This Government Bill was introduced in the House of Lords on 7 January. The Second Reading debate took place on 5 February.
14. The Bill is identical in substance to one introduced in the House of Commons towards the end of the 2017–19 Session. That had completed Committee Stage when Parliament was prorogued on 8 October. It was re-introduced in the House of Lords at the start of the 2019 Session but it made no progress before dissolution on 5 November.
15. The Ministry of Justice has provided a memorandum about the delegated powers in the Bill.³ We wish to draw to the attention of the House the significant delegations of power contained in clauses 1 and 4 (described in paragraph 35 below).

Overview

16. The Bill, which extends to England and Wales only, revises the legal processes set out (a) in the Matrimonial Causes Act 1973 (MCA) for married couples to obtain a divorce or judicial separation, and (b) in the Civil Partnership Act 2004 (CPA) for civil partners to dissolve their civil partnership or obtain a legal separation. In summary, the Bill:
 - removes the requirement for a party seeking a divorce, dissolution or separation to provide evidence of conduct or separation “facts”;⁴
 - abolishes the right of a respondent to contest the applicant’s decision to seek a divorce or dissolution, as a statement that a marriage or civil partnership has broken down irretrievably is now to be taken as conclusive evidence of irretrievable breakdown;
 - introduces a new minimum time-frame of six months (26 weeks) between the first and the final stage of the divorce or dissolution process, made up of a new minimum 20-week period between the start of proceedings and confirmation to the court that a conditional divorce or dissolution order should be made, combined with a minimum six-week period between conditional divorce or dissolution order and the making of the final order;
 - introduces a new option of joint application for cases where there is a mutual decision to dissolve a marriage or civil partnership or to seek a judicial separation;
 - amends the MCA and CPA so that a court will be obliged to grant a judicial separation simply at the request of one or both parties;⁵
 - amends the terminology and procedure relating to petitions to annul a marriage;

3 Ministry of Justice Delegated Powers Memorandum <https://publications.parliament.uk/pa/bills/lbill/58-01/002/5801002-DPM.pdf>

4 For example, adultery or “unreasonable behaviour”.

5 See clause 2 of the Bill. There is no requirement to file a statement that the marriage or civil partnership has broken down irretrievably or to prove any facts. A judicial separation is a formal separation sanctioned by the court. It does not bring a legal end to a marriage or civil partnership.

- updates terminology in the MCA by replacing terms such as “decree nisi”, “decree absolute” and “petitioner” with “conditional order”, “final order” and “applicant”.⁶

The existing law

17. The MCA and CPA currently require a party petitioning for a divorce or dissolution to prove to the court that the marriage or civil partnership has irretrievably broken down by reference to one or more of the following facts: the other party has committed adultery,⁷ behaved “unreasonably”⁸ or deserted the petitioner for at least two years; or that the parties have been separated for two years and they both consent to a divorce or dissolution, or separated for five years and the respondent does not consent.⁹
18. Where the respondent contests the divorce petition (which happens only rarely), there has to be a trial before a judge with oral evidence from the parties and other witnesses. The court must dismiss the petition if it finds that the petitioner has not proved the allegations or (in a petition based on the respondent’s behaviour) that they are insufficiently serious to justify a divorce.¹⁰
19. But if the court is satisfied that the petitioner has proved one or more of these grounds, it must grant a divorce decree or a dissolution order. The decree or order is initially provisional. It is called a decree nisi (for a marriage) or a conditional order (for a civil partnership).
20. After the expiry of six weeks from the date of the decree nisi or conditional order, the petitioner can apply for the divorce to be made absolute or the dissolution to be made final.
21. The respondent can apply for the divorce to be made final after the expiry of three months from the date of the decree nisi if the petitioner has not done so. The court may then make the divorce absolute, rescind the decree nisi, or otherwise deal with the case as it thinks fit. The court may, for example, prevent the divorce from being made absolute until childcare or financial issues have been resolved. The Queen’s Proctor¹¹ may apply to the court for the revocation of a decree nisi where it comes to light that the petitioner had obtained the decree dishonestly. There are mirror provisions for civil partnerships.
22. The MCA and CPA each contain delegated powers which allow for the six-week period between divorce decree nisi and absolute (or, under the CPA, the conditional and final order) to be altered by order, although it cannot

6 This will align the terminology of the MCA with that of the CPA.

7 This ground does not apply to a civil partnership.

8 The exact wording in section 1 of the MCA is: “the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent”.

9 A petitioner who seeks a judicial separation rather than a divorce must also prove one or more of these facts; but he or she does not have to show that the marriage has broken down irretrievably.

10 The vast majority of divorces are uncontested. But a recent, well-publicised example of a contested divorce is the case of *Owens v Owens* which went to the Supreme Court. The Court’s judgment in that case ([2018] UKSC 41) gave the impetus for the change in the law proposed by this Bill.

11 The Treasury Solicitor also holds the separate office of Queen’s Proctor.

be increased to a period of longer than six months.¹² The MCA confers that power on the High Court, while the CPA confers it on the Lord Chancellor.¹³

The proposed new law

23. The Bill makes fundamental changes to the way in which a party or parties to marriage or civil partnership may obtain a divorce or dissolution.
24. There will be two stages to the new process. The first stage begins when an application for a divorce or dissolution is lodged with the court. The application can be made either by one party alone or by both parties jointly. The party or parties making the application will have to file with it a statement that the marriage or civil partnership has broken down irretrievably, which the court will be required to accept at face value. This applies even if the other party objects (in the case of an application made by only one party).
25. The applicant (or joint applicants) must then wait for a period of 20 weeks beginning with the date on which the application was lodged before filing with the court a statement that they wish the process to continue. The court will not make a conditional divorce or dissolution order until after the statement is filed.
26. At Commons Second Reading of the 2017–19 Session Bill on 25 June 2019, the then Lord Chancellor, the Rt Hon. David Gauke, described the first stage as “a period of reflection”. He said that the Bill will make “the court process towards a conditional order less rushed and give couples further time to consider the implications of the divorce”.¹⁴
27. The then Parliamentary Under-Secretary of State for Justice, Paul Maynard MP, elaborated on this in Commons Public Bill Committee on 2 July 2019. He said:

“The 20-week period is a key element of the reformed legal process. For the first time, a minimum period has been imposed before the conditional order of divorce is made. The intention is to allow greater opportunity for the applicant to reflect on the decision and to decide arrangements for the future where divorce becomes inevitable.”¹⁵
28. In the Lords Second Reading debate on this Bill on 5 February, the Advocate-General for Scotland, the Rt Hon Lord Keen of Elie QC, said:
29. “It will introduce a new minimum period of 20 weeks from the start of proceedings to when the applicant or the joint applicants can confirm to the court that a conditional order may be made. There is currently no minimum period, meaning that decrees nisi are reached as quickly as couples and the court process allow. Our proposal will allow time to consider the implications of the divorce. Between 2011 and 2018, around two-thirds of cases reached conditional order in less than our proposed 20-week minimum period. About one in 10 cases did so within eight weeks, and four in 10 cases between nine and 16 weeks. Our reform is in no measure introducing so-called quickie

¹² The court is given power to shorten the period in a particular case.

¹³ See section 1(5) MCA (which confers power on the High Court to make a “general order”) and section 38(2) CPA.

¹⁴ HC Deb, 25 June 2019, col. 662.

¹⁵ Public Bill Committee, 2 July 2019, col. 35.

divorce; for around 80% of couples the divorce will actually take longer than it does currently.”¹⁶

30. The second stage begins with the date on which the court makes the conditional order. The parties then need to wait for a further period of at least six weeks from that date before an application can be made to the court for a final order of divorce or dissolution.
31. The Minister explained the purpose of the second stage in Commons Public Bill Committee on 2 July 2019:

“... the objective ... is to improve the financial arrangements. People may wish to delay a little longer until such a point. It is not a maximum period; it is a minimum, and the process might well take longer. It is about ensuring that we take a progressive, step-by-step approach to bringing the marriage to an end, and people may wish to tie up further loose ends, which may take longer than six weeks. There has always been a six-week gap to ensure, if nothing else, that all the paperwork is in order.”¹⁷
32. He added that the first and second stages together:

“will now mean that in nearly all cases a divorce may not be obtained in a shorter period than 26 weeks, or six months”.
33. Lord Keen of Elie said this about the second stage at Lords Second Reading on 5 February:

“In addition to the new minimum period of 20 weeks, the six-week minimum period between conditional and final orders will remain. As is the case now, the divorce will not be able to proceed to conditional order unless the court is satisfied in relation to service on the respondent.”¹⁸
34. New sections 1(8) of the MCA and 37A(5) of the CPA will allow a court to shorten either the first or second stage (or both) in a particular case.

Delegated Powers

Clauses 1 and 4(3): power for Lord Chancellor to adjust the length of the first stage and/or the second stage

35. New section 1(6) of the MCA and new section 37A(3) of the CPA, inserted by clauses 1 and 4 of the Bill respectively, confer Henry VIII powers on the Lord Chancellor, by order subject to the negative procedure, to adjust the periods specified in the Bill for the first and second stages, but subject to the proviso that the period between the start of the first stage and the end of the second stage may not exceed 26 weeks in total. There is, however, nothing to prevent the Lord Chancellor from using the power to reduce the period, even by several weeks.

Justification for the power

36. The delegated powers memorandum emphasises¹⁹ that a delegated power exists in current legislation to allow for the alteration of the current minimum

16 HL Deb, 5 February 2020, col. 1809.

17 Public Bill Committee, 2 July 2019, col. 35.

18 HL Deb, 5 February 2020, col. 1810.

19 See para 1(d) of the memorandum.

timeframe between a conditional order and final order for the dissolution of a civil partnership²⁰ and between decree nisi and decree absolute for a divorce.²¹ As noted above, this cannot be exercised to extend the period beyond 26 weeks.

37. The memorandum gives the following justification for the new powers in this Bill:

“Whilst it is appropriate to continue to set out a minimum time period for divorce and dissolution in primary legislation, it is also appropriate to continue to allow for flexibility for that time period to be adjusted without recourse to primary legislation, as Parliament has long allowed”.²²

38. The memorandum also explains that the Lord Chancellor “will be able to make adjustments to the time periods, for example if policy considerations meant that it would be appropriate to shorten one or both of the time periods”. However, it gives no indication at all as to what the policy considerations might be.²³

39. **We regard this as a very weak justification for an important Henry VIII power.**

40. During the Commons debates on the Bill in the 2017–19 Session, Ministers described the 20-week period for reflection in the first stage as “a key element of the reformed legal process” and emphasised that parties would normally have to wait for at least six months before a divorce can be finalised; yet clauses 1 and 4 would allow the Lord Chancellor entire discretion to change the length of either or both stages, the only restriction being that the overall period cannot be extended to longer than 26 weeks.

41. As we observe above, new section 1(8) of the MCA permits a court to reduce the length of either stage of the divorce process in a particular case. This might allow a judge to shorten either stage if, for example, there is an urgent need to finalise a divorce in order to protect an applicant from an abusive spouse or civil partner. It is therefore wholly unclear to us why the Government need to have powers which allow them to change the length of *both* stages for *all* divorces.

42. **In our view the Government have failed adequately to explain the reasons why these wide delegated powers are necessary since, as we have stated above, the Courts in individual cases have the power to shorten the period. We therefore recommend that new section 1(6) of the MCA and new section 37A(3) of the CPA should be omitted from the Bill on the ground that they contain an inappropriate delegation of power.**

43. We considered whether more restrictive powers might be appropriate – for example, ones which allowed the Lord Chancellor by order to alter the respective durations of the first and second stages without reducing or increasing the total length (26 weeks) of the two stages combined. We believe that narrower powers such as these could be acceptable, if the Government

20 See section 38(2) of the CPA.

21 See section 1(5) of the MCA (as it currently stands).

22 See para 9 of the memorandum.

23 See para 10 of the memorandum.

were able to provide a satisfactory justification for the criteria, specified on the face of the Bill, to be applied in exercising them.

44. **We also recommend that the Bill should, in any event, require the Lord Chancellor to undertake a public consultation exercise before exercising these powers, whether or not they are restricted in scope. This is so that the views of judges, the Law Society, divorce practitioners and the general public are fully taken into account before the waiting periods are amended.**

Justification for the Parliamentary procedure

45. The memorandum explains that the negative procedure for the powers in clauses 1 and 4 is considered appropriate because they are “clearly circumscribed [ones], relating to procedural time periods which have the further limitation that the Lord Chancellor may not lengthen the prescribed overall 26 week period and because the power in section 38(2) of the CPA, which these powers partially re-enact (the key change being the content of the prescribed time periods which the Lord Chancellor can change), is also subject to the negative procedure”.²⁴
46. In our view, however, the Henry VIII powers in clauses 1 and 4 are different in nature and scope from the ones they replace. As we explain in paragraph 22 above, existing legislation allows only for the alteration of the period between a decree nisi and a decree absolute or (for a civil partnership) between a conditional and final dissolution order. In contrast, the new powers conferred by this Bill could be used in a way which radically altered the rationale for the revised divorce process.
47. Ministers have emphasised in Parliamentary debates that the waiting period of six months between the start and the end of the new process is fundamental to the reformed divorce regime. It is, therefore, in our view inapt to describe new section 1(6) of the MCA and new section 37A(3) of the CPA as “clearly circumscribed” or as merely “relating to procedural time periods”.
48. A statutory instrument changing the duration of the new divorce process is likely to be of considerable interest to Parliament, particularly if it reduced that duration to a very short period.
49. **We therefore recommend that the affirmative procedure should apply if these powers are retained in the Bill, regardless of whether they are narrowed.**

²⁴ See para 19 of the memorandum.

NHS FUNDING BILL

50. This Bill contains no delegated powers.

TERRORIST OFFENDERS (RESTRICTION OF EARLY RELEASE) BILL

51. There is nothing in this Bill, which was introduced in the House of Commons on 11 February 2020, 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 12 February 2020 Members declared no interests.

Attendance

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