

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

28th Report of Session 2019–21

**Covert Human
Intelligence Sources
(Criminal Conduct) Bill**

**Domestic Abuse Bill:
Government Response**

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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](#)

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.

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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 hldelgatedpowers@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 Eighth Report

COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) BILL

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

DOMESTIC ABUSE BILL: GOVERNMENT RESPONSE

2. We considered this Bill in our 21st Report of this Session.¹ The Government have now responded by way of a letter from Alex Chalk MP, Parliamentary Under Secretary of State for Justice, and Baroness Williams of Trafford, Minister of State at the Home Office. The response is printed at Appendix 1.

¹ [21st Report](#), Session 2019-21 (HL Paper 117).

APPENDIX 1: DOMESTIC ABUSE BILL: GOVERNMENT RESPONSE

Letter from Alex Chalk MP, Parliamentary Under Secretary of State for Justice, and Baroness Williams of Trafford, Minister of State at the Home Office, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

Thank you for your report following the Committee’s scrutiny of the provisions of the Domestic Abuse Bill (“the Bill”). The Government has carefully considered the Committee’s recommendations and our response is set out below.

The Committee’s recommendations

The Committee has made recommendations in relation to clause 63 of the Bill. Clause 63 inserts new provisions into the Matrimonial and Family Proceedings Act 1984 relating to the prohibition, in certain circumstances, of cross-examination in person in family proceedings. Clause 63 contains three delegated powers allowing the Lord Chancellor to make regulations in relation to the following:

- New section 31R(5): the definition of a “specified offence”.
- New section 31S(4): the definition of a “protective injunction”.
- New section 31T(3): the definition of “specified evidence”.

The Committee has recommended that the content intended for those regulations be set out in the Bill itself. The Committee’s reasons for this recommendation are:

- The Government has indicated that it has already made up its mind in relation to the contents of the regulations.
- The need to keep the definitions up-to-date in future can be achieved by use of a Henry VIII power (allowing amendment of the primary legislation by regulations made by statutory instrument by affirmative procedure), rather than by a delegated power to make regulations by negative procedure.

Government response

The definitions will be in the form of lists. The Committee reasoned that lists such as those contemplated by the three delegated powers, can be included in secondary legislation, or in primary legislation where the Government’s mind is made up. The Committee concluded that the Government’s mind was made up and therefore recommended including the lists in the Bill.

The Government has been clear that our intention for the delegated powers at clause 63 is that the meaning of “specified offences”, “protective injunctions” and “specified evidence” will *broadly* mirror existing lists in the legal aid regime. However, there is still assessment to be done as to whether the precise and voluminous detail of the existing lists should feature identically in the context of the

prohibition of cross-examination in person, or whether minor adjustments may be desirable or required. In addition, the existing lists comprise considerable detail and complexity – often running to many pages of secondary legislation -- which the Government wishes to ensure it has considered properly in the context of the prohibition on cross-examination in person provisions. The Government also intends to carry out engagement with stakeholders in the domestic abuse

sector in relation to the list of specified evidence of domestic abuse to ensure it is appropriately broad, up-to-date, and achieves the aims of the bill.

Relatedly, the Government considers that the length and detail of these lists are of a type conventionally and generally considered appropriate for secondary legislation,² and indeed there is precedent for this approach. The list of specified evidence of domestic violence used in the legal aid regime for the purposes of establishing eligibility for civil legal aid is set out in the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098), made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the LASPO Act”). The list was originally contained in regulation 33(2) but was subsequently moved to a schedule given its length and complexity. It currently runs to over three pages and includes 22 paragraphs. Similarly, the non-statutory list of specified offences published by the Lord Chancellor under section 2 of the LASPO Act and referred to in SI 2012/3098, runs to 14 pages.

It is also generally considered that detail of this nature is appropriate for secondary legislation where it is anticipated it may change in future.³ The Committee has recognised the need for change and proposed that if the lists are included in primary legislation, a Henry VIII power could be included to amend the lists. The Government considers, however, that it is consistent with precedent, and an appropriate use of delegated legislation (particularly given the Government’s need still to consider further finer detail) that these lists be specified in secondary legislation in the first instance.

It has always been the Government’s intention that all three definitions (which together make up the automatic “triggers” for the prohibition on cross-examination in person) should be contained in one document. It is vital that these lists are easily accessible, particularly for victims and self-represented litigants in the family courts. We consider that laying all three sets of regulations together in one instrument will provide the greatest clarity possible to victims and any legal representatives.

The Government is grateful for the Committee’s detailed consideration of the proposed powers, but for these reasons, the Government considers it appropriate to retain the three delegated powers in their present form.

14 October 2020

2 See for example the criteria endorsed by the House of Lords Select Committee on the Constitution, in *The Legislative Process: The Delegation of Powers* (20 November 2018), at paragraphs 9, 15 and 25.

3 *Ibid.*

APPENDIX 2: MEMBERS' INTERESTS

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