



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

23rd Report of Session 2022–23

**Financial Services and
Markets Bill**
Mobile Homes (Pitch Fees) Bill
**Water Safety
(Curriculum) Bill [HL]**
**Education (Non-religious
Philosophical Convictions)
Bill [HL]**

Ordered to be printed 18 January 2023 and published 18 January 2023

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

Baroness Browning
Lord Cunningham of Felling
Lord Goddard of Stockport
Lord Haselhurst
Lord Hendy

Lord Janvrin
Lord McLoughlin (Chair)
Baroness Meacher
Lord Rooker
Lord Tope

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at 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/hldprcrpublications.

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 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 Third Report

FINANCIAL SERVICES AND MARKETS BILL

1. This Bill came to the House of Lords on 8 December 2022. It makes provision about the regulation of financial services and markets following the withdrawal of the UK from the EU. We commend the Treasury for providing us with a thorough and helpful delegated powers memorandum.¹
2. We draw the House's attention to one provision of the Bill: clause 76(6). This states that, where any statutory instrument made under the Bill as enacted would otherwise be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.
3. Hybrid instruments are instruments considered to affect specific private or local interests in a manner different from the private or local interests of other persons or bodies of the same class. Under House of Lords Private Business Standing Orders,² a special procedure allows anyone whose private interests are directly and specially affected by the instrument to petition against it. The petition may in due course be considered by a select committee of the House of Lords.
4. Clause 76(6) prevents this special procedure applying to any instrument under the Act that would otherwise be hybrid. We routinely draw the attention of the House to such “de-hybridising” clauses so that the House can satisfy itself that any interests that would normally be afforded protection by the hybrid instruments procedure are afforded protection by other means, for example, statutory consultation.³
5. **Accordingly, we draw the de-hybridisation provision in clause 76(6) to the attention of the House. The House may wish to ask the Minister:**
 - (a) **to give examples of instruments that might have benefited from the hybrid instrument procedure and against which clause 76(6) is aimed; and**
 - (b) **to explain how any interests, which might otherwise have been afforded protection by the hybrid instrument procedure, may be protected by other means.**

1 HM Treasury, *Delegated Powers Memorandum*, 8 December 2022.

2 PrBSO 216. There is no equivalent procedure in the House of Commons.

3 *21st Report*, Session 2015–16 (HL Paper 98), para 35 and appendix 1. *27th Report*, Session 2015–16 (HL Paper 132), paras 28–31.

MOBILE HOMES (PITCH FEES) BILL

6. This Bill contains no delegated powers.

WATER SAFETY (CURRICULUM) BILL [HL]

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

**EDUCATION (NON-RELIGIOUS PHILOSOPHICAL
CONVICTIONS) BILL [HL]**

8. This Bill contains no delegated powers.

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 18 January 2023, Members declared no interests.

Attendance

The meeting was attended by Baroness Browning, Lord Cunningham of Felling, Lord Janvrin, Lord Haselhurst, Lord Hendy, Lord McLoughlin, Baroness Meacher, Lord Rooker and Lord Tope.