



HOUSE OF LORDS

Select Committee on the Constitution

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12th Report of Session 2022–23

# **Levelling-up and Regeneration Bill**

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### *Select Committee on the Constitution*

The Constitution Committee is appointed by the House of Lords in each session “to examine the constitutional implications of public bills coming before the House and to keep under review the operation of the constitution and constitutional aspects of devolution.”

#### Membership

The Members of the Constitution Committee are:

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| <a href="#"><u>Baroness Fookes</u></a>             | <a href="#"><u>Lord Howell of Guildford</u></a>     |                                                    |
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### *Committee staff*

The current staff of the committee are John Turner (Clerk), Rachel Borrell (Policy Analyst) and Jackie Lam (Committee Operations Officer). Professor Stephen Tierney and Professor Alison Young are the legal advisers to the Committee.

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# Levelling-up and Regeneration Bill

## LEVELLING-UP AND REGENERATION BILL

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### Introduction

1. The Levelling-up and Regeneration Bill was introduced in the House of Commons on 11 May 2022 and brought to the House of Lords on 19 December 2022. Second reading took place on 17 January 2023 and committee stage is scheduled to begin on 20 February.
2. On 2 February 2022 the Government published its *Levelling Up the United Kingdom* White Paper.<sup>1</sup> The Bill is intended to support the Government's commitment to 'level-up' the United Kingdom<sup>2</sup> and has four overarching objectives:
  - to place a duty on the Government to report annually on progress towards achieving its levelling-up missions;
  - to create a new framework for the devolution of power to combined county authorities;
  - to deliver new powers for local authorities;
  - to provide for changes to planning regulations, including environmental regulations.<sup>3</sup>

### Size of the Bill

3. The Bill may be described as an omnibus bill.<sup>4</sup> The Bill currently comprises 223 clauses and 18 schedules. Although its main purpose is to extend local devolution in England, it includes extensive modifications to planning and environmental law.
4. In our report on the Police, Crime, Sentencing and Courts Bill in 2021 we observed: "Bills of this size and complexity impede proper legislative scrutiny in Parliament."<sup>5</sup> In a recent debate the Leader of the House of Lords, Lord True, echoed this sentiment:

"Large Bills can certainly frustrate the process of orderly discussion just as much as skeleton—as they are described—Bills may. We need to reflect collectively on both of those matters and whether either of those extremes are the right way to go forward."<sup>6</sup>

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- 1 HM Government, '*Levelling Up the United Kingdom*' (2 February 2022) CP 604: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1052708/Levelling\\_up\\_the\\_UK\\_white\\_paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052708/Levelling_up_the_UK_white_paper.pdf) [accessed 18 January 2023]
  - 2 *Explanatory Notes to the Levelling-up and Regeneration Bill*, para 1
  - 3 *Explanatory Notes to the Levelling-up and Regeneration Bill*, para 6
  - 4 In its report on Parliament and the legislative process, the Committee observed that so-called "Christmas tree bills" are those: "which seem intended to focus on a specific area of the law but then incorporate multiple provisions that deal with matters not directly related to the principal purpose of the legislation, or bills with a scope which is so widely defined as to allow a very broad range of topics to be included." See Constitution Committee, *The Legislative Process: Preparing Legislation for Parliament* (4th Report, Session 2017–19, HL Paper 27), paras 169–71
  - 5 Constitution Committee, *Police, Crime Sentencing and Courts Bill* (7th Report, Session 2021–22, HL Paper 64), para 5
  - 6 HL Deb 12 January 2023, [col 1583–4](#) [Lords Chamber]

5. **We reiterate our firm conclusion that the size and complexity of omnibus bills impede proper legislative scrutiny in Parliament and welcome the Leader of the House’s recent comments on the matter.**

### **Local democracy and greater decentralisation in England**

6. Part 2 sets out a new framework for local democracy and devolution. It empowers the Secretary of State to make regulations providing for the establishment of combined county authorities (CCA)<sup>7</sup> and establishing the constitution of CCAs.<sup>8</sup>
7. The Secretary of State may make further regulations related to the operation of CCAs, including (but not limited to):
- for the costs of the CCA to be met by its constituent councils and to determine how the assessment of the contribution of each constituent council is to be made;<sup>9</sup>
  - transferring functions from county or district councils to the CCA, when the Secretary of State “considers that the function can appropriately be exercised by the CCA”;<sup>10</sup>
  - to transfer functions of an Integrated Transport Authority or a passenger transport executive to a CCA (with the consent of the constituent or appropriate councils of the CCA);<sup>11</sup>
  - to provide for a mayor for a CCA, provided this has the consent of the constituent or appropriate councils.<sup>12</sup> The Secretary of State may provide for any function of a mayoral CCA to be exercisable only by the mayor.<sup>13</sup> A mayor may also request that the Secretary of State transfers functions of the CCA to be directly exercised by the mayor.<sup>14</sup> The mayor may delegate these functions to the deputy mayor;<sup>15</sup>
  - transferring the functions of the police and crime commissioner in the area covered by a CCA to the mayor of that CCA.<sup>16</sup> The Secretary of State may also authorise the mayor to delegate fire and rescue functions to the chief constable of the police force for their area, who can delegate these functions further;<sup>17</sup>

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7 CCAs are a new form of local government institution which can be established in, and will enable devolution to, areas with two-tier local government. At present, the model available for combined authorities is primarily designed for urban areas. CCAs are intended to provide a model more appropriate for non-metropolitan areas, many of which have two-tier local government. [Explanatory Notes to the Levelling-up and Regeneration Bill](#), paras 32–33 and 119.

8 [Levelling-up and Regeneration Bill](#), clauses 7 and 8. Under clause 43, CCAs may be created following a proposal submitted to the Secretary of State by a county council, unitary district council, economic prosperity board, Integrated Transport Authority or combined authority.

9 [Levelling-up and Regeneration Bill](#), clause 14

10 [Levelling-up and Regeneration Bill](#), clause 16

11 [Levelling-up and Regeneration Bill](#), clause 19

12 [Levelling-up and Regeneration Bill](#), clause 25

13 [Levelling-up and Regeneration Bill](#), clause 28

14 [Levelling-up and Regeneration Bill](#), clause 29. This may only occur when the mayor provides a statement that all the constituent councils consent, or where this is not possible, the reasons why the mayor nevertheless wishes to transfer these powers.

15 [Levelling-up and Regeneration Bill](#), clause 28

16 [Levelling-up and Regeneration Bill](#), clause 31

17 [Levelling-up and Regeneration Bill](#), clause 32

- to change existing CCAs if the Secretary of State considers that “to do so is likely to improve the economic, social and environmental well-being of some or all of the people who live and work in the area” and he or she considers it is appropriate to do so, having regard to the need “to secure effective and convenient local government” and “to reflect the identities and interests of local communities.”<sup>18</sup>
8. There is therefore potential for significant variation in how each CCA operates and the powers transferred to it.
  9. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:
 

“The devolution framework should include steps to achieve greater coherence in England’s sub-national governance arrangements to improve democratic accountability. We recommend the development of devolution within England should ensure greater alignment between subnational bodies to create functioning economic geographies which also respect local identities, in so far as possible.”<sup>19</sup>
  10. **The House may wish to satisfy itself that the framework and the powers given to the Secretary of State under the Bill strike the right balance between devolving an appropriate degree of power to each combined county authority—depending on local preference and capacity—and avoiding unnecessary complexity and incoherence in the arrangements across England.**

## Devolution

### *Consultation and time to consider legislative consent*

11. Both the Scottish and Welsh governments have expressed concern that they were not sufficiently consulted by the UK Government prior to the introduction of the Bill.<sup>20</sup> There also appear to have been difficulties in ensuring sufficient time for committees, especially in the Senedd, to engage adequately in the legislative consent process for the Bill.<sup>21</sup>

<sup>18</sup> [Levelling-up and Regeneration Bill](#), clause 46

<sup>19</sup> Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 267

<sup>20</sup> Scottish Government, *Legislative Consent Memorandum: Levelling-up and Regeneration Bill* (27 July 2022), para 17: <https://www.parliament.scot/-/media/files/legislation/bills/lcms/levelling-up-and-regeneration-bill/splcms0623.pdf> [accessed 18 January 2023]; Scottish Government, ‘Levelling-up and Regeneration Bill: letter from Cabinet Secretary for Finance and Economy’ (25 June 2022): <https://www.gov.scot/publications/levelling-up-and-regeneration-bill-letter-from-cabinet-secretary-for-finance-and-economy/> [accessed 19 January 2023]; Welsh Government, *Legislative Consent Memorandum: Levelling-up and Regeneration Bill* (28 September 2022), para 3: <https://senedd.wales/media/5gdfx1u1/lcm-ld15356-e.pdf> [accessed 18 January 2023]

<sup>21</sup> For example, the Business Committee for the Senedd Cymru moved the original deadline for reports from committees on the legislative consent motion. See Business Committee, *Revised timetable for consideration: Legislative Consent Memorandum on the Levelling-up and Regeneration Bill* (November 2022): <https://senedd.wales/media/gbucpe5u/cr-ld15501-e.pdf> [accessed 25 January 2023]. Given the changes to the Bill, the Welsh Government laid a revised legislative consent memorandum on 25 November 2022, and a supplementary consent memorandum on 30 November 2022. See Senedd Cymru, ‘Legislative Consent: Levelling-up and Regeneration Bill’ (26 May 2020): <https://business.senedd.wales/mgIssueHistoryHome.aspx?IIId=39536> [accessed 25 January 2023]. In Senedd Cymru, the legislative consent motion is being considered by the Legislation, Justice and Constitution Committee, the Local Government and Housing Committee, the Climate Change, Environment and Infrastructure Committee and the Economy, Trade and Rural Affairs Committee. See Senedd Cymru, ‘Legislative Consent: Levelling-up and Regeneration Bill: Issue History’: <https://business.senedd.wales/mgIssueHistoryChronology.aspx?IIId=39536&Opt=2> [accessed 25 January 2023].

12. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:

“[t]he Devolution Guidance Notes require early consultation with the devolved legislatures on the devolved aspects of UK bills, to address any significant issues in good time ... We believe it would be desirable for all efforts to be taken to resolve any substantive disagreements before a bill is introduced to Parliament.”<sup>22</sup>

13. **We are not able to assess the accuracy of assertions by the Scottish and Welsh governments that the UK Government did not sufficiently consult them before the Bill was introduced; nor can we judge whether the time allotted to the devolved legislatures was adequate to allow them to determine whether to grant consent to the Bill.**
14. *However, we reiterate that early consultation with the devolved legislatures on provisions of a Bill which are potentially within devolved competence helps facilitate the resolution of any substantial disagreements before the Bill is introduced to Parliament.*

*Is the Sewel convention engaged?*

15. Part 1 of the Bill, which requires UK ministers to report to Parliament on the delivery of levelling-up missions, extends to England, Wales, Scotland and Northern Ireland.<sup>23</sup> The UK Government has said that it does not consider it necessary to seek the consent of the devolved legislatures on Part 1:<sup>24</sup>

“Since [the duties to lay statements and reports before Parliament] apply to inequalities across the UK as a whole this does not relate to the legislative competence of the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru.”<sup>25</sup>

16. However, the Scottish and Welsh governments argue that the legislative consent process is engaged by Part 1 as it relates to levelling-up missions within the legislative competence of their respective parliaments.<sup>26</sup> The Scottish Government is also concerned that the powers in Part 1 may give rise to expenditure to finance projects in Scotland without the consent of the Scottish Parliament.<sup>27</sup>
17. In *Respect and Cooperation: Building a Stronger Union for the 21st Century* we said:

“At present when the Government considers consent is not required from a devolved legislature and proceed to give effect to that view, there is no parliamentary scrutiny of this determination. In future we recommend

22 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 136

23 *Levelling-up and Regeneration Bill*, Part 1 and Clause 222(1)

24 *Explanatory Notes to the Levelling-up and Regeneration Bill*, p 267

25 *Explanatory Notes to the Levelling-up and Regeneration Bill*, para 1939

26 Scottish Government, *Legislative Consent Memorandum: Levelling-up and Regeneration Bill* (27 July 2022), paras 13–15: <https://www.parliament.scot/-/media/files/legislation/bills/lcms/levelling-up-and-regeneration-bill/splcms0623.pdf> [accessed 18 January 2023]; Welsh Government, *Legislative Consent Memorandum: Levelling-up and Regeneration Bill* (28 September 2022), paras 44–47: <https://senedd.wales/media/5gdfx1u1/lcm-ld15356-e.pdf> [accessed 18 January 2023]

27 Scottish Government, *Legislative Consent Memorandum: Levelling-up and Regeneration Bill* (27 July 2022), paras 18–19: <https://www.parliament.scot/-/media/files/legislation/bills/lcms/levelling-up-and-regeneration-bill/splcms0623.pdf> [accessed 18 January 2023]

that the Government should justify its approach to the House at the beginning of a Bill's consideration."<sup>28</sup>

18. **As noted above, earlier consultation could help resolve any disagreement between the UK Government and the Scottish and Welsh governments on whether the legislative consent process is engaged.**
19. *We reiterate our recommendation that when the Government considers the legislative consent process is not engaged and this assessment is disputed by a devolved authority, it should justify its approach to the House at the beginning of a bill's consideration.*

*Delegated legislation on devolved matters*

20. The Bill empowers UK ministers to make delegated legislation in areas that have been devolved in Scotland, Wales and Northern Ireland. This includes a power to make legislation that amends primary legislation, including Acts of the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly.<sup>29</sup>
21. In *The Legislative Process: the Delegation of Powers* we concluded:

“[w]here UK ministers seek a power to amend devolved legislation, they must be subject to a statutory requirement to consult the relevant devolved administration.”<sup>30</sup>
22. The Bill includes a requirement to consult relevant devolved ministers when making regulations containing provision within devolved competence.<sup>31</sup> In our report on the Trade (Australia and New Zealand) Bill, which also enables UK ministers to make delegated legislation in areas of devolved competence, we welcomed a statement from the minister, Lord Johnson of Lainston, that: “the Government are committed to not normally using this Bill’s powers without the consent of the devolved Administrations, and we will never use them without consulting the devolved Administrations first.”<sup>32</sup>
23. **We welcome the requirement in the Bill to consult relevant devolved ministers when making regulations containing provision within devolved competence. However, we emphasise that when—as in this case—delegated legislation can be used to overturn Acts of the devolved legislatures, consultation is essential. There may be real value in the Government including the devolved legislatures and their committees in such consultations.**
24. *We urge the Government to replicate for the Levelling Up and Regeneration Bill its commitment on the Trade (Australia and New Zealand) Bill “not normally” to use delegated powers in areas of devolved competence without the consent of the relevant devolved administrations.*

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28 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 139

29 *Levelling-up and Regeneration Bill*, clauses 78–83 and 138–151

30 Constitution Committee, *The Legislative Process: the Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 70

31 *Levelling-up and regeneration Bill*, clauses 83 and 143

32 HL Deb, 9 January 2023, [col 1234](#). See Constitution Committee, *Trade (Australia and New Zealand) Bill* (11th Report, Session 2022–23, HL Paper 135).

*Common frameworks*

25. Part 6 empowers the Secretary of State to make regulations setting out outcomes relating to environmental protection in the UK and relevant offshore areas.<sup>33</sup> Clause 143 provides that, where environmental outcome regulations contain provisions within devolved competence, they may not be made without the prior consultation of Scottish ministers, Welsh ministers or the relevant Northern Ireland department.<sup>34</sup>
26. There is a risk that regulations made by the Secretary of State under Part 6 could interfere with existing common frameworks<sup>35</sup> relating to the environment.<sup>36</sup> These are frameworks agreed between the UK Government and devolved administrations which are intended to enable the UK internal market to function effectively across the entire UK, while enabling policy divergence. In most cases they include a review and amendment mechanism which ensures that the common framework can adapt to changing policy and governance. The common framework mechanism relies on consensus at each stage of the process and includes means through which to resolve disagreement.
27. **It is an essential feature of the common framework system that it allows frameworks to be modified by agreement and provides for a dispute avoidance and resolution mechanism if agreement is not reached. We are concerned that delegated powers provided for in Part 6—which do not take account of the common framework system—risk undermining environmental policy agreed by consensus through that system.**

*Guidance*

28. The Bill provides for mandatory guidance to be issued by the Secretary of State. For example, clause 53 empowers the Secretary of State to give guidance on the formation of and functions of a CCA. Any authority (including a county council, district council, an integrated transport authority, a combined authority or a CCA) “must have regard to any guidance given ... in exercising any function conferred or imposed” by Part 2.<sup>37</sup>
29. We have previously criticised the use of mandatory guidance as amounting to ‘disguised legislation’. The Delegated Powers and Regulatory Reform

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33 [Levelling-up and Regeneration Bill](#), clause 138

34 [Levelling-up and Regeneration Bill](#), clause 143

35 Following the UK’s exit from the EU, the UK Government has been working with the devolved administrations to develop common frameworks. They are intended to agree a common approach where powers returned from the EU intersect with areas of devolved competence. Cabinet Office, ‘UK Common Frameworks’ (19 December 2022): <https://www.gov.uk/government/collections/uk-common-frameworks#department-for-environment,-food-and-rural-affairs> [accessed 19 January 2023]

36 This includes common frameworks developed by the Department for Environment, Food and Rural Affairs, which include: Ozone Depleting Substances (ODS) and Fluorinated Greenhouse Gases (F-gases), Air quality, Integrated pollution prevention and control: developing and setting of Best Available Techniques, and Chemicals and pesticides.

37 [Levelling-up and regeneration Bill](#), clause 53. In addition, schedule 11 provides a discretionary power for the Secretary of State to issue guidance to a charging authority or public authority on infrastructure levies. The authority must have regard to this guidance. [Levelling-up and regeneration Bill](#), schedule 11, para 1

Committee has defined ‘disguised legislation’ as “instruments which are legislative in effect but often not subject to parliamentary oversight”.<sup>38</sup>

30. However, in the case of the Bill it is mandatory for public authorities only to “have regard” to guidance in the performance of their functions, rather than to comply with guidance.
31. **We do not consider this example of mandatory guidance to give rise to constitutional concerns. However, we urge the Government to introduce a standardised definition of what is meant by guidance.**

### Planning law

32. Clause 113 empowers the Secretary of State to make regulations setting a “relief period” during which local planning authorities may restrict their enforcement of planning conditions.<sup>39</sup>
33. The Explanatory Notes justify this power by reference to situations which arose during the COVID-19 pandemic and the later shortage of heavy good vehicles.<sup>40</sup> There is nothing in the Bill limiting the exercise of this power to emergency situations or other forms of serious disruption.
34. **We are concerned by the breadth of the power in clause 113. We recommend that clause 113 is amended to ensure that the power is limited to emergency periods or other forms of serious disruption, as set out in the Explanatory Notes.**

### Development corporations

35. Part 8 empowers local authorities, or a group of local authorities, to propose the establishment of urban development areas.<sup>41</sup> The Secretary of State may, by regulations, agree to the proposal, designate an area as an urban development area and establish an Urban Development Corporation for the area if satisfied that “it would be expedient in the local interest”.<sup>42</sup> A local authority, rather than central government, is responsible for the Urban Development Corporation.<sup>43</sup> The Bill removes financial and borrowing limits of Urban Development Corporations.<sup>44</sup>
36. **We draw to the attention of the House that Urban Development Corporations, which will be overseen by local authorities, are not subject to the financial and borrowing limits applied to local authorities themselves. The House may wish to ask the Government to explain this arrangement and whether it has considered if safeguards are necessary to prevent local authorities from using Urban Development Corporations to circumvent restrictions on their own financial and borrowing limits.**

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38 Constitution Committee, *Energy Bill [HL]* (Fourth Report, Session 2022–23, HL Paper 60), para 5; Delegated Powers and Regulatory Reform Committee, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report, Session 2021–22, HL Paper 106), para 89

39 *Levelling-up and Regeneration Bill*, clause 113

40 *Explanatory Notes to the Levelling-up and Regeneration Bill*, para 676

41 *Levelling-up and Regeneration Bill*, clause 156

42 *Levelling-up and Regeneration Bill*, clauses 156(2)(b) and 157

43 *Explanatory Notes to the Levelling-up and Regeneration Bill*, para 909

44 *Levelling-up and Regeneration Bill*, clause 164

### Information about interests and dealings in land

37. Part 11 empowers the Secretary of State to make regulations requiring the provision of information on transactions and other dealings in land if the Secretary of State considers that such information would be useful to identify the owners of the land and those with the right to control or influence the owner of a relevant interest in land.<sup>45</sup>
38. These regulations may provide for the sharing of this information to those performing a public function and the publication of this information.<sup>46</sup> The regulations may also provide for exemption from civil liability with regard to the publication of inaccurate or potentially misleading information.<sup>47</sup>
39. **Our understanding is that the civil liability exemption in clause 207(3) is included to protect third parties who may unknowingly publish inaccurate or potentially misleading information provided to them by the Secretary of State. *The House may wish to ask the Government if that is the case. If so, we recommend that the exemption be more tightly defined to restrict it to the persons to whom the information has been provided.***

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<sup>45</sup> [Levelling-up and Regeneration Bill](#), clause 204

<sup>46</sup> [Levelling-up and Regeneration Bill](#), clause 207

<sup>47</sup> [Levelling-up and Regeneration Bill](#), clause 207(3)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Baroness Drake (Chair)  
 Lord Falconer of Thoroton  
 Lord Faulks  
 Baroness Fookes  
 Lord Hennessy of Nympsfield  
 Lord Hope of Craighead  
 Lord Howard of Lympne  
 Lord Howarth of Newport  
 Lord Howell of Guildford  
 Lord Robertson of Port Ellen  
 Lord Sherbourne of Didsbury  
 Baroness Suttie  
 Lord Thomas of Gresford

### Declarations of interest

Baroness Drake (Chair)  
*No interests declared*  
 Lord Falconer of Thoroton  
*No interests declared*  
 Lord Faulks  
*No interests declared*  
 Baroness Fookes  
*No interests declared*  
 Lord Hennessy of Nympsfield  
*No interests declared*  
 Lord Hope of Craighead  
*No interests declared*  
 Lord Howard of Lympne  
*Non-executive Chairman, South West Strategic Developments Limited (property development)*  
 Lord Howarth of Newport  
*No interests declared*  
 Lord Howell of Guildford  
*No interests declared*  
 Lord Robertson of Port Ellen  
*Non-executive Chairman (formerly Non-executive Director), Western Ferries (Clyde) Ltd*  
 Lord Sherbourne of Didsbury  
*No interests declared*  
 Baroness Suttie  
*No interests declared*  
 Lord Thomas of Gresford  
*No interests declared*

A full list of members' interests can be found in the Register of Lords' Interests:  
<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Professor Stephen Tierney, University of Edinburgh, and Professor Alison Young, University of Cambridge, acted as legal advisers to the Committee. They declared no relevant interests.