

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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26th Report of Session 2022–23

**Northern Ireland  
(Executive  
Formation and  
Organ and Tissue  
Donation) 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*

[Baroness Bakewell of Hardington](#)  
[Lord Carlile of Berriew](#)  
[Lord Cunningham of Felling](#)  
[Lord Goodlad](#)  
[Lord Hendy](#)

[Baroness Humphreys](#)  
[Lord Janvrin](#)  
[The Earl of Lindsay](#)  
[Lord McLoughlin](#) (Chair)  
[Lord Rooker](#)

### *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/hldprrcpublications](http://www.parliament.uk/hldprrcpublications).

### *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](mailto: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 Sixth Report

## NORTHERN IRELAND (EXECUTIVE FORMATION AND ORGAN AND TISSUE DONATION) BILL

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### Clause 2—Procedure for regulations defining “permitted material”

1. This Bill went through all its Commons stages on 22 February. It is due to go through all its Lords stages on 27 February. On introduction the Bill did not contain any delegated powers. However, during its passage through the Commons a new clause was inserted which deals with organ and tissue donation in Northern Ireland. The purpose of the new clause 2 of the Bill is to change the level of parliamentary scrutiny which applies to regulations defining “permitted material” for the purposes of section 3 of the Human Tissue Act 2004 (“the 2004 Act”).
2. The Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022 (“the 2022 Act”), which was enacted by the Northern Ireland Assembly in March 2022 shortly before its dissolution, amended section 3 of the 2004 Act to change the current system in Northern Ireland from one in which a person must “opt-in” to organ donation to one in which—subject to some exceptions—they must now “opt out”. This system of deemed consent is limited to the transplantation of what is referred to in the 2004 Act as “permitted material”. As with England and Wales, the human material which can be transplanted without a person’s express consent is left to be set out in regulations, which in the case of Northern Ireland are to be made by the Department of Health in Northern Ireland. The relevant powers are conferred by section 3(9A) of the 2004 Act as inserted by section 1 of the 2022 Act.
3. Consistently with the position in England and Wales, regulations under section 3(9A) are subject to the draft affirmative resolution procedure, with the approval to be given by the Northern Ireland Assembly. The effect of clause 2 of the Bill is to remove the requirement for the affirmative procedure, and to provide for the negative procedure to apply instead. The reason for making this change is the absence of an Assembly to approve the draft affirmative regulations, which effectively prevents the making of the necessary regulations and consequentially also prevents the changes made by the 2022 Act from being implemented. The change in the level of parliamentary scrutiny is time limited and will only apply until the Presiding Officer and deputies are in post having been elected under section 39(1) of the Northern Ireland Act 1998.
4. **We consider that ordinarily it would be inappropriate for the regulation making power conferred by section 3(9A) of the 2004 Act to be made subject to any procedure other than the affirmative resolution procedure. However, we take the view that the exceptional circumstances applying in Northern Ireland make the application of the negative resolution procedure not inappropriate during the period when there is no Assembly to carry out the approval function under the affirmative procedure.**

## APPENDIX 1: MEMBERS' INTERESTS

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For the business taken at the meeting on 23 February 2023, Members declared no interests.

### **Attendance**

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Carlile of Berriew, Lord Goodlad, Baroness Humphreys, Lord Janvrin, the Earl of Lindsay, Lord McLoughlin and Lord Rooker.