



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

31st Report of Session 2022–23

**Levelling-up and
Regeneration
Bill: Government
Amendment**

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HL Paper 181

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.

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.

Thirty First Report

LEVELLING-UP AND REGENERATION BILL: GOVERNMENT AMENDMENT

1. This Bill was passed by the House of Commons on 13 December 2022. It was introduced in the House of Lords on 19 December. Committee stage began on 20 February 2023 and is scheduled to continue until 24 April.
2. In our 24th Report, we drew a number of powers in the Bill to the attention of the House.¹
3. On 13 March, the Government tabled amendments to the Bill to be moved in Committee.
4. The Department for Levelling Up, Housing and Communities (DLUHC) has provided a Supplementary Delegated Powers Memorandum (“the Supplementary Memorandum”)² for those amendments.
5. We draw one power to the attention of the House.

Amendment 467D: new clause to be inserted after clause 214—power to replace the Health and Safety Executive as building safety regulator

6. The Building Safety Act 2022 (“the 2022 Act”) established a new “building safety regulator” in England to oversee a more stringent regulatory regime for “higher-risk buildings”³ and to drive improvements in building safety and performance standards in all buildings. This was one of a series of measures adopted in the 2022 Act:

“to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith Hackitt⁴ by strengthening the whole regulatory system for building safety”.⁵

The 2022 Act provides for the Health and Safety Executive to be the “building safety regulator”.⁶

7. Amendment 467D inserts a new clause giving the Secretary of State a very broad power to make provision by regulations to:
 - provide for a new regulator to replace the Health and Safety Executive as the building safety regulator for the purposes of the 2022 Act;
 - establish a body to be the new regulator;
 - confer new functions on, or modify the functions of, the new regulator;

1 Delegated Powers and Regulatory Reform Committee, *24th Report* (Session 2022–23, HL Paper 142).

2 DLUHC, *Second Supplementary Memorandum*

3 The 2022 Act defines “higher-risk building” as one that is at least 18 metres in height or has at least 7 storeys, and is of a description specified in regulations made by the Secretary of State (see new s120D(2) of the Building Act 1984, inserted by s31 of the 2022 Act).

4 In her *Independent Review of Building Regulations and Fire Safety*, published in May 2018.

5 See para 3 of the Explanatory Notes to the 2022 Act.

6 See s2 of the 2022 Act.

- establish or modify the constitutional arrangements of the new regulator;
 - establish or modify the funding arrangements of the new regulator; and
 - confer power on the Secretary of State to give directions to the new regulator.
8. The power conferred is a Henry VIII power: it allows the Secretary of State to “amend, repeal or revoke any provision made by or under [any] Act”.
9. The power is subject to the affirmative procedure⁷ but is otherwise subject to little by way of constraint—
- there is no requirement for consultation, for pre-conditions to be met or for criteria to be satisfied;
 - it is sunsetted—the starting point is that the power cannot be exercised more than two years after the final report of the Grenfell Tower Inquiry is presented to Parliament—but the Secretary of State is given power to override this and extend the sunset by such period as the Secretary of State sees fit.
10. The Supplementary Memorandum provides the following justification for the power—
- “We consider it appropriate to act now, to ensure that we are ready to respond to the anticipated Grenfell Tower Inquiry final report expected later this year ...
- We understand that the direction of travel now is for the department to be able to act quickly where required to, on all aspects of building safety. Having the flexibility to act without needing further legislation to bring the regulator within the view of the DLUHC SoS and to allow the regulator to have a narrower focus than the wider remit of HSE, is prudent and more efficient in that regard.”⁸
11. We consider that this falls well short of providing adequate justification—
- the Government have failed to explain why something of such major policy significance as re-writing the regulatory system for building safety to address recommendations made in the forthcoming final report of the Grenfell Tower Inquiry should be left to regulations;
 - the presumption should be that, if an Act of Parliament is not working as it should, Parliament should revisit the matter and enact changes, rather than leave the matter to Ministers to deal with in regulations. If, on receiving the Inquiry’s final report, the Government consider that the regulatory regime in the 2022 Act needs to be changed, the presumption should be that primary legislation is brought forward for that purpose;
 - the Government have failed to recognise that creating and empowering an important public body is a matter of considerable policy significance. The Constitution Committee has rightly described the establishment

7 By virtue of Amendment 504GK.

8 At para 78.

of public bodies through delegated powers as “constitutionally unacceptable”;⁹

- the power is subject to the affirmative procedure but, as we have repeatedly said, this “offers nothing like the scrutiny given to a bill. A bill typically goes through several substantive stages in each House and can be amended. An affirmative statutory instrument is unamendable during its making and is debated once in each House”;¹⁰
- the suggestion that the power is necessary “to ensure that we are ready to respond to”¹¹ recommendations in the final report of the Grenfell Tower Inquiry does not stand up to scrutiny. As we have repeatedly observed, Parliament can act very quickly to pass primary legislation; and
- the drafting of the provision doesn’t fit with the justification provided. First, if the reason for taking the power is that Ministers need to be able to legislate very quickly in response to the Inquiry’s final report, why then does the sunset provision allow the power to be exercised up to two years after that report is published—and indeed as far beyond the two-year point as the Secretary of State may specify? Second, the scope of the power is not limited to addressing recommendations made in the Inquiry’s final report: it is wider than that, with the Supplementary Memorandum suggesting that the power may be used to confer on the new regulator not only functions relating to building safety but also functions relating to such things as “housing standards and the inter-generational impact of new buildings”.¹²

12. We consider that the Supplementary Memorandum provides wholly inadequate justification for giving the Secretary of State such a broad Henry VIII power to—

- **replace the Health and Safety Executive as the building safety regulator for the purposes of the Building Safety Act 2022;**
- **create and empower a new public body to be the building safety regulator; and**
- **determine what functions the regulator will have,**

and thereby allowing something of such political significance as addressing recommendations made in the forthcoming final report of the Grenfell Tower Inquiry to be left to Ministerial regulations.

13. Accordingly, we consider that Amendment 467D contains an inappropriate delegation of power that should not form part of the Bill.

⁹ Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), Summary para 4. See also paras 47–50.

¹⁰ See, for example, *34th Report* (Session 2017–19, HL Paper 194), para 6.

¹¹ See para 78 of the Supplementary Memorandum.

¹² *Ibid.*, para 71.

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 19 April 2023, the following interests were declared:

Levelling-up and Regeneration Bill

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Attendance

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