



HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

32nd Report of Session 2022–23

Supported Housing (Regulatory Oversight) Bill
Workers (Predictable Terms and Conditions) Bill
Child Support (Enforcement) Bill
Hunting Trophies (Import Prohibition) Bill
Powers of Attorney Bill
Pensions (Extension of Automatic Enrolment)
(No.2) Bill
Animals (Low-Welfare Activities Abroad) Bill
Veterans Advisory and Pensions Committees Bill
Protection from Sex-based Harassment in
Public Bill
Firearms 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/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 hlddelegatedpowers@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 Second Report

SUPPORTED HOUSING (REGULATORY OVERSIGHT) BILL

1. This is a private member's Bill which has been produced with the support of the Government. The Bill is concerned with enabling the regulation of the supported housing sector to ensure minimum standards are maintained for the support and accommodation provided in such housing.
2. The Department for Levelling Up, Housing and Communities has provided a Delegated Powers Memorandum ("the Memorandum"). We draw the following matters to the attention of the House.

Clause 3 – Power to set national standards for England in relation to supported accommodation

3. Clause 3 confers a power on the Secretary of State to prepare and publish national standards for England in relation to any aspect of the provision of supported exempt accommodation¹ (to be known as "National Supported Housing Standards"). This includes a power to set minimum standards in respect of the type or condition of premises used for supported exempt accommodation and in respect of the provision of care, support or supervision at such premises. The Secretary of State is under a duty to keep the standards under review and prepare and publish revised standards whenever considered appropriate.
4. Although clause 3 itself does not provide for the National Supported Housing Standards to have any legislative effect, clause 4 (which deals with the licensing of providers) requires regulations under that clause to be made with a view to securing that the National Supported Housing Standards are met (see clause 4(6)). This suggests that the regulations will include provision which will make it a legal requirement for licensed providers of supported exempt accommodation to comply with the National Supported Housing Standards. Accordingly, in practice the standards will have effect as legal requirements.
5. The National Supported Housing Standards are not required by the Bill to be subject to any parliamentary scrutiny, nor is there any requirement for them to be laid before Parliament. There is instead a duty on the Secretary of State to publish the standards by such means as is considered appropriate to bring them to the attention of persons affected by them. The only reason given in the Memorandum for the lack of parliamentary scrutiny is that "the Standards are technical and operational matters which will be of a detailed nature and are not suitable for inclusion in primary or secondary legislation".² We do not consider the fact that the standards are liable to be "technical", "operational" or "detailed" is a sufficient reason in itself for excluding parliamentary scrutiny. The standards will be fundamental to determining the nature and level of the provision which is required to be made in the regulated supported housing sector, and on that basis we take the view that they should be subject to parliamentary scrutiny. This would then be consistent with the approach adopted in the equivalent licensing

¹ The term "supported exempt accommodation" is defined in clause 12 of the Bill.

² See the section on clause 3(1) on p 4 of the Memorandum.

regime established by Part 2 of the Housing Act 2004 (“the 2004 Act”) for houses in multiple occupation (HMO), where provision is made for the required minimum standards to be specified in regulations subject to the negative resolution procedure.³

6. **Accordingly, we recommend that, if the standards are made mandatory through the licensing regime, they should also be made subject to parliamentary scrutiny with the negative procedure offering an appropriate level of scrutiny.**

Clause 4 – Power to make licensing regulations

7. Clause 4 confers a power on the Secretary of State to make provision under which a person who is in control of or managing supported exempt accommodation must obtain and comply with a licence granted by the local housing authority. The regulations will not apply to all local authorities, but only where the authority’s area is designated for the purposes of the regulations. The regulations are required to include provision for the designation of local authority areas. That provision may involve designation by the authority itself or by the Secretary of State.
8. Clause 5 sets out a non-exhaustive list of the types of provision which may be included in licensing regulations under clause 4. This includes, as well as provision about the making of applications and the circumstances in which licences are to be granted, provision about the conditions which may be attached to licences and provision relating to enforcement and otherwise relating to the consequences of non-compliance. This can include things such as the creation of criminal offences (limited to fines), removing or restricting an entitlement to housing benefit, and limiting the rent for the accommodation.
9. The Memorandum explains that the licensing regime is to be set out in regulations rather than on the face of the Bill because of the requirement under clause 6 for the Secretary of State to consult certain persons before making the first regulations.⁴ But no explanation is given as to why it would not have been feasible for the consultation to take place before the introduction of the legislation so that the detailed provision in relation to licensing can be placed on the face of the primary legislation. In this context, we note that the equivalent provisions governing the licensing of HMOs are set out in primary legislation, in Part 2 of the 2004 Act.
10. The answer may lie in the fact that there is no immediate intention to make licensing regulations. But, if so, this is not clearly explained in the Memorandum, nor is it clearly reflected in the Bill. The Memorandum suggests that:

“Clause 4(3) imposes a duty on the Secretary of State to lay licensing regulations under clause 4(1) within the period of 18 months beginning with the day on which the Bill is passed.”⁵

3 See section 65 of the 2004 Act.

4 See the paragraph dealing with the justification for the delegation in the section of the Memorandum on clauses 4(1) and (4) and 5(7) on p 5 of the Memorandum.

5 See paragraph 1 of the text dealing with the context and purpose of the delegation in the same section of the Memorandum.

But this is incorrect because no such provision is contained in clause 4(3) or anywhere else in the Bill. Clause 4(2) includes a requirement on the Secretary of State to publish a report setting out progress that has been made towards making licensing regulations, if no such regulations have been made within one year of the enactment of the Bill. This seems to imply an intention that licensing regulations should be made, but it still leaves open the possibility that they may not be.

11. **Accordingly, the House may wish to invite the sponsor of the Bill to clarify whether the policy is for the Secretary of State to be required to make licensing regulations. If so, we recommend that clause 4 is re-cast as a duty to make the regulations rather than being framed as a power. The House may also wish to invite the sponsor of the Bill to explain why it was not feasible or appropriate for any consultation on the provisions to take place before introduction to enable more of the detail of the licensing regime to be placed on the face of the Bill, consistently with the approach adopted for HMOs in Part 2 of the 2004 Act. In the absence of convincing reasons, we consider the powers are inappropriate in leaving all the detail of the licensing regime to be left to subordinate legislation.**

WORKERS (PREDICTABLE TERMS AND CONDITIONS) BILL

12. This is a private member's Bill which is being supported by the Government. The Bill is concerned with workers for whom there is a lack of predictability as regards any part of their work pattern (such as in the case of zero hours workers). The Bill enables such workers to apply to their employer for a change in terms and conditions of their employment to secure a more predictable work pattern.
13. The Department for Business, Energy, and Industrial Strategy (as it was then known) has provided a Delegated Powers Memorandum for the Bill ("the Memorandum"). We draw the following matters to the attention of the House.

Clauses 1 and 2 – Powers to prescribe the qualification period in respect of the rights conferred by the Bill

Clause 1

14. Clause 1 amends Part 8A of the Employment Rights Act 1996 by adding a new set of provisions (sections 80IA to 80IE) which allow workers, whose work patterns lack predictability, to apply to their employer for a change in terms and conditions of their employment. An employer to whom such an application is made is required to deal with the application in a reasonable manner and may only reject the application if one of a number of conditions is met. Where the employer fails to deal with the application in accordance with the relevant statutory requirements, the worker is entitled to present a complaint to an employment tribunal.
15. By virtue of section 80IB(3), a worker may only apply to their employer for a change in terms of employment to achieve a more predictable work pattern if they have been employed by that same employer over a specified length of time (whether or not under the same contract), with that period to be specified in regulations made by the Secretary of State.
16. The provisions contained in the Bill were proposed by the Government in its Good Work Plan as part of the response to the 2017 Taylor Review of Modern Working Practices. In the Good Work Plan, the Government indicated that those wishing to apply for a change in their terms and conditions of employment to secure more predictability would be able to request a change after 26 weeks of service. Despite this, no reference is made to the 26-week period on the face of the Bill. The Memorandum also contains no reference to the proposed 26-week period. It instead explains that:

“Taking this power allows the Secretary of State to make changes, for example in light of new evidence emerging around atypical contracts and the gig economy, in light of evolving work practices, or if it is determined that the right should accrue at a different time”.⁶

It would be feasible to specify the 26-week period on the face of the Bill, whilst at the same time conferring a power on the Secretary of State to amend the period by regulations. **In the circumstances, the House may wish to invite the sponsor of the Bill to explain why, if the policy is for the qualification period to be set at 26 weeks, provision is not made for**

⁶ See para 2 of the section on section 80IB(3) on p 4 of the Memorandum.

that on the face of the Bill (albeit with a power to amend the period by regulations, if considered appropriate); and, in the absence of a convincing explanation for leaving the matter solely to regulations, we recommend that the Bill should be amended accordingly.

17. Regulations under section 80IB(3) setting the qualification period are subject to the negative resolution procedure. There is a single sentence in the Memorandum to explain this level of parliamentary scrutiny:

“The Department considers that the negative resolution is appropriate due to the discrete issue covered by these regulations.”⁷

18. We assume the Department means by this that the negative procedure is appropriate because of the narrow scope of the regulation making power which relates solely to setting the length of the qualification period. If so, we are not convinced by this explanation. The length of the qualification period is liable to have a significant effect in determining the number of workers who are able to take advantage of the rights conferred by clause 1 of the Bill. There are no limits on the face of the legislation as to how long or short the period may be set at using the regulation making power. Although it may be unlikely in practice, the power could be used by a future Government substantially to diminish the rights conferred by the Bill by setting a very long qualification period. **In the circumstances we take the view that the power should instead be subject to the affirmative resolution procedure.**

Clause 2

19. Clause 2 makes similar provision with respect to agency workers as that made by clause 1 in relation to other workers. Again, it does this by inserting new provisions (sections 80IF to 80IL) into Part 8A of the Employment Rights Act 1996. Section 80IF(1) allows agency workers, whose work patterns lack predictability, to apply to the temporary work agency with whom they have a contract to change the terms and conditions to get a more predictable work pattern. Section 80F(2) allows an agency worker, whose work pattern lacks predictability, also to apply to the hirer for whom they work to enter into a contract of employment or other worker’s contract with them to secure a more predictable work pattern.
20. In both cases, an agency worker will be disqualified from making an application if the condition relating to the qualification period is not met, with the relevant period again falling to be specified in regulations subject to the negative resolution procedure. However, the nature of the period is different in each case:
 - In the case of an application by an agency worker under section 80IF(1), the relevant period is the period during which the agency worker must have had a contract with the temporary work agency.
 - In the case of an application under section 80IF(2), the Bill includes on its face the requirement that the agency worker must have worked for the hirer for a continuous period of at least 12 weeks. The period to be set out in regulations is the period during which that continuous

⁷ See para 3 of the same section in the Memorandum.

period of 12 weeks service must have occurred prior to the application being made.

21. In explaining the approach adopted in each case, the Memorandum gives the same justification as that set out in paragraph 6 above, about the need to have power to change the period in order to respond to changing circumstances.⁸ As a result, it is unclear whether the intention is to apply the same 26-week qualification period in either or both cases. However, we assume that, if a length of time has been decided on for the qualification period under clause 1, a period or periods is also likely to have been determined for the equivalent provisions in clause 2, whether or not it is the same 26-week period.
22. **Accordingly, the House may wish to invite the sponsor of the Bill to explain whether a specific period has already been determined for each of the two cases covered by clause 2; and, if so, in the absence of convincing reasons to the contrary, we recommend that the Bill should be amended to specify the relevant period or periods on the face of the Bill. We also consider that the powers should be subject to the affirmative resolution procedure rather than the negative procedure given the importance of the qualification period in determining which agency workers have access to the rights conferred by clause 2.**

8 See para 3 of the section on section 80IG(1) and (2)(a) on p 6 of the Memorandum.

CHILD SUPPORT (ENFORCEMENT) BILL

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

HUNTING TROPHIES (IMPORT PROHIBITION) BILL

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

POWERS OF ATTORNEY BILL

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

PENSIONS (EXTENSION OF AUTOMATIC ENROLMENT) (NO.2) BILL

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

ANIMALS (LOW-WELFARE ACTIVITIES ABROAD) BILL

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

VETERANS ADVISORY AND PENSIONS COMMITTEES BILL

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

PROTECTION FROM SEX-BASED HARASSMENT IN PUBLIC BILL

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

FIREARMS BILL

30. This Bill does not contain any 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 19 April 2023 and covered by this Report, Members declared no interests.

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.