

HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

3rd Report of Session 2023–24

National Insurance Contributions (Reduction in Rates) Bill

Automated Vehicles Bill [HL]

Digital Markets, Competition and Consumers Bill

Arbitration Bill [HL]

and 14 Private Members' Bills

Conversion Therapy Prohibition (Sexual
Orientation and Gender Identity) Bill [HL]

Succession to Peerages and Baronetcies Bill [HL]

Employment and Trade Union Rights
(Dismissal and Re-engagement) Bill [HL]

Housing Act 1988 (Amendment) Bill [HL]

Alternative Investment Fund Designation
Bill [HL]

Genocide (Prevention and Response) Bill [HL]

Foetal Sentience Committee Bill [HL]

Schools (Mental Health Professionals)
Bill [HL]

At-Home Early Medical Abortion (Review)
Bill [HL]

Workforce Information (Ethnicity) Bill [HL]

Commercial Organisation and Public
Authorities Duty (Human Rights and
Environment) Bill [HL]

Coroners (Determination of Suicide) Bill [HL]

Genocide Determination Bill [HL]

Wheelchair Access Bill [HL]

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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.

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Publications

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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.

Third Report

NATIONAL INSURANCE CONTRIBUTIONS (REDUCTION IN RATES) BILL

1. This Bill, which was introduced in the House of Lords on 4 December and which is expected to go through all its stages on 12 December, delivers on the commitment in the Government's Autumn statement to cut the rate of National Insurance contributions. It includes one provision which confers delegated powers and in respect of which the Treasury have provided a delegated powers memorandum ("the Memorandum").
2. The Schedule to the Bill contains consequential and transitional provision. It includes at paragraph 5 a regulation making power for the Treasury to make such provision as they consider appropriate in consequence of the Bill, and a power to make such transitional and saving provision as they consider appropriate in connection with the commencement of the Bill's provisions.
3. Paragraph 5(2) of the Schedule makes it clear that regulations under paragraph 5 may amend, repeal or revoke any enactment, including primary legislation. It is therefore a Henry VIII power. Paragraph 5(2) also allows the regulations to make provision having retrospective effect from no earlier than 6 April 2023.
4. Regulations under paragraph 5 of the Schedule are subject to the negative resolution procedure in respect of all exercises of the powers. This is different from what usually happens; although many Acts include a regulation making power for making consequential etc. provision, they are usually framed so that the affirmative resolution procedure applies where the power is used to amend primary legislation.
5. We have previously expressed the view, both in our *Democracy Denied?* report and in our guidance for departments, that there is a presumption that Henry VIII powers will be subject to the affirmative resolution procedure, and accordingly that, where a lower level of scrutiny applies, a full explanation should be given in the memorandum.¹ It seems to us that this presumption applies with even greater force where the usual practice is for the affirmative resolution procedure to apply.
6. There is only a very brief explanation in the Memorandum as to why the negative resolution procedure applies to all exercises of the powers, and there is no acknowledgment of the fact that it is exceptional to provide for a Henry VIII power to be subject to such a level of scrutiny. The Memorandum states:

“Paragraph [5(4)] provides that a statutory instrument containing regulations under this [paragraph] is subject to annulment in pursuance of a resolution of the House of Commons or the House of Lords. This is

¹ See DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, (12th Report, Session 2021–22, HL Paper 106), paras 75–85 and DPRRC, *Guidance for Departments* (November 2021), paras 7 and 11: <https://committees.parliament.uk/publications/8225/documents/84262/default/>.

considered appropriate as the provisions made by the Bill are relieving, the consequential provisions will not increase any liability.”²

7. We do not consider this explanation to be adequate, particularly in the light of what we have said in the past about the need to give a full explanation where exceptionally a bill provides for Henry VIII powers to be subject to the negative resolution procedure. As is usual with a power to make consequential provision, it is framed so as to enable the Treasury to make such provision “as they consider appropriate”. This confers a broad discretion on the Treasury to decide on the type of provision it is appropriate to make in consequence of the Bill’s provisions. It does not follow, in our view, that the provisions will necessarily be constrained in the way suggested by the Treasury.
8. **Accordingly, we consider that the Treasury have failed to provide an adequate explanation as to why the power is subject only to the negative resolution procedure given that it is capable of being used to amend primary legislation. The House may wish to ask the Minister to provide a full explanation for the chosen level of scrutiny. We also take the view that, in the absence of a convincing explanation, the powers should be subject to the affirmative resolution procedure where they are used to amend primary legislation.**

2 HM Treasury, ‘Memorandum to the Delegated Powers and Regulatory Reform Committee on National Insurance Contributions (Reduction in Rates) Bill’ (November 2023), para 10: <https://publications.parliament.uk/pa/bills/cbill/58-04/0012/231123DelegatedPowersmemo.pdf> [accessed 7 December 2023]. Square brackets are used in the quoted passage because the original contains mistakes—ie it refers to paragraph 6(4) instead of 5(4), and to regulations under this section instead of regulations under this paragraph.

AUTOMATED VEHICLES BILL [HL]

9. This Bill was introduced in the House of Lords on 8 November. Its second reading took place on 28 November.
10. The purpose of the Bill is to set the legal framework for the safe deployment of self-driving vehicles in Great Britain. It implements recommendations from a 4-year review of regulation for self-driving vehicles carried out by the Law Commission and the Scottish Law Commission.³
11. The Bill contains 100 clauses and six Schedules. There are 35 delegated powers.
12. The Department for Transport has provided a delegated powers memorandum (“the Memorandum”) for the Bill.⁴
13. We draw the following powers to the attention of the House.

Clause 36(9) and paragraph 2(7) of Schedule 6—powers to determine maximum civil monetary penalties

14. The regulatory regime provided for in the Bill includes provision for civil sanctions including civil monetary penalties.
15. Clause 36(9) gives the Secretary of State power to determine, by regulations subject to the negative procedure, the maximum amounts payable by way of such penalties by—
 - an “authorised self-driving entity”⁵ or a “licensed no-user-in-charge operator”⁶ for failure to meet regulatory requirements or to comply with an information notice,⁷ an interview notice,⁸ a compliance notice⁹ or a redress notice;¹⁰ and
 - an authorised self-driving entity in respect of a traffic infraction.
16. The regulations must prescribe—
 - the maximum sum that may be specified in a notice imposing a monetary penalty; and
 - the maximum sum that may be added to that penalty for each day that the failure to which the penalty notice relates continues.

3 Law Commission and Scottish Law Commission, *Automated Vehicles: joint report* (26 January 2022): <https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2022/01/Automated-vehicles-joint-report-cvr-03-02-22.pdf> [accessed 7 December 2023]

4 Department of Transport, ‘Memorandum to the Delegated Powers and Regulatory Reform Committee on the Automated and Electric Vehicles Bill’ (November 2023): <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0112/Automated-and-Electric-Vehicles-Bill-Delegated-Powers-Memorandum-171017.pdf> [accessed 7 December 2023]

5 A person designated in accordance with clause 6 as having responsibility for ensuring that an automated vehicle is capable of travelling autonomously safely and legally.

6 A person licenced under regulations made under clause 12 to oversee journeys by vehicles that are not fully automated but are capable of completing part of a journey in self-driving mode.

7 A notice requiring a regulated body to provide information to the Secretary of State.

8 A notice requiring a regulated body to procure the attendance of an individual at a particular place and at a particular time in order to answer questions.

9 A notice requiring a regulated body to take action to comply with a regulatory requirement.

10 A notice requiring a regulated body to take action to rectify, mitigate, or compensate for loss, damage, inconvenience or annoyance.

17. The Secretary of State also has power, exercisable by negative procedure regulations, to provide for the power in clause 36(9) to instead be exercisable by a traffic commissioner.¹¹
18. Paragraph 2(7) of Schedule 6 gives an appropriate national authority¹² power to determine, by negative procedure regulations, the maximum amounts payable by way of civil monetary penalties by a holder of a permit for the provision of automated passenger services for (a) an infringement of the permit scheme, or (b) failure to comply with a compliance notice.
19. Again, the regulations must prescribe—
- the maximum sum that may be specified in a notice imposing a monetary penalty; and
 - the maximum sum that may be added to that penalty for each day that the failure to which the penalty notice relates continues.
20. The Memorandum cites two precedents for these powers: section 40A(3) of the Competition Act 1998 and section 111(4) and (6) of the Enterprise Act 2002.¹³ However, those powers are limited in a way that the powers in the Bill are not. They allow maximum amounts payable by way of civil penalties to be specified by negative procedure regulations but this is subject to an important limitation: the Acts that confer those powers both provide that any sum specified in the regulations cannot exceed ceiling amounts specified in the Acts themselves. The Memorandum does not mention this. No explanation is therefore provided for a key divergence from the two precedents to which the Memorandum itself refers.
21. **We consider that—**
- **it is inappropriate for the maximum amounts payable by way of civil penalties to be left entirely to negative procedure regulations; and**
 - **in the absence of provision in the Bill setting ceiling amounts above which any amount specified in the regulations cannot go, the powers in clause 36(9) and paragraph 2(7) of Schedule 6 to set maximum monetary penalties are inappropriate and should be removed from the Bill.**

Clause 50—power to change or clarify existing traffic legislation

22. Part 2 of the Bill makes provision with respect to a “user-in-charge” of an automated vehicle. This concept relates to vehicles that are not fully automated but are capable of completing part of a journey in self-driving mode. For example, a vehicle may be capable of self-driving only on motorways. Such

11 See para 8(1) of Schedule 1. Traffic Commissioners currently have responsibility for the licensing and regulation of those who operate conventional heavy goods vehicles, buses and coaches, and the registration of local bus services. They are appointed by the Secretary of State and operate at arm’s length from the Department for Transport as independent regulators.

12 The Secretary of State, in relation to (a) a permit for the provision of a service in England, and (b) a permit for the provision of a service in a public service vehicle; the Scottish Ministers, in relation to a permit for the provision of a service in Scotland; and the Welsh Ministers, in relation to a permit for the provision of a service in Wales.

13 Paras 86 and 322.

a vehicle would require a driver on roads other than motorways. The driver would become a “user-in-charge” when the vehicle is in self-driving mode.

23. Clause 46 provides that a person is the “user-in-charge” of a vehicle if—
- the vehicle is an authorised automated vehicle with an authorised user-in-charge feature;
 - that feature is engaged; and
 - the individual is in, and in position to exercise control of, the vehicle, but is not controlling it.
24. Clauses 47 to 49 provide that, subject to limited exceptions, the “user-in-charge” of a vehicle does not commit an offence arising from the way in which the vehicle is driven.
25. However, the task of amending existing legislation that relates to the driving or use of a vehicle to set out how it applies to a “user-in-charge” is left to regulations. Clause 50 gives the Secretary of State power to make provision by regulations “for the purpose of changing or clarifying whether, how or in what circumstances” any primary or secondary legislation that “relates to the driving or use of a vehicle” applies to the user-in-charge of a vehicle.
26. The power in clause 50 is a Henry VIII power. Where it is used to amend primary legislation, the affirmative procedure applies. Where it is used to amend any other legislation, the negative procedure applies.
27. As the Memorandum explains,¹⁴ the need for a power of this kind was endorsed in the Law Commissions’ final report in recommendation 45:
- “The new Act should include a regulation-making power to adapt the lists of dynamic and non-dynamic offences¹⁵ in the light of experience, including a power to allocate some or all roadworthiness responsibilities to the [company responsible for authorisation of the vehicle as self-driving]”.
28. However, the Law Commissions did not address the issue of the level of parliamentary scrutiny that should apply to regulations made under such a power. The Memorandum acknowledges that “the power may be used to amend a wide range of existing subordinate legislation”.¹⁶ This could include not only statutory instruments made under the negative procedure but also (a) statutory instruments made under the affirmative procedure, and (b) assimilated direct legislation (UK domestic legislation derived from EU legislation, including EU Regulations). The Memorandum doesn’t explain why all amendments to such legislation should be subject only to the negative procedure.
29. **We recommend that—**
- **the House presses the Minister to identify—**

14 Para 112.

15 A “dynamic offence” means an offence relating to the way in which a vehicle is driven. A “non-dynamic offence” means an offence relating to matters such as roadworthiness, insurance and paying tolls.

16 Para 124.

(a) delegated legislation made under the affirmative procedure, and

(b) assimilated direct legislation,

that could be amended under this power, and to explain why all amendments to such legislation should be subject only to the negative procedure; and

- **in the absence of a satisfactory explanation, the power in clause 50 is inappropriate.**

Clause 91—power to amend type approval legislation

30. Clause 91 gives the Secretary of State power to amend “assimilated type approval legislation” listed in that clause to make it “more suitable” for automated vehicles. The legislation listed makes provision for types of vehicles to be approved for use subject to meeting specified regulatory, technical and safety requirements. It comprises (a) assimilated direct legislation (UK domestic legislation derived from EU Regulations), and (b) statutory instruments made to give effect to EU obligations. The power in clause 91 is subject to the negative procedure.

31. The legislation that can be amended under the power is unusual because, despite not being primary legislation, it includes provisions that create criminal offences and set maximum penalties for those offences. The reasons for this are historical and relate to the UK’s former membership of the European Union.

32. The power would therefore appear to allow—

- criminal offences to be amended and maximum penalties for those offences to be determined; and
- new criminal offences to be created and maximum penalties set for such offences,

by regulations subject only to the negative procedure.

33. The Memorandum makes no mention of this, despite the Committee’s Guidance for Departments on the role and requirements of the Committee stating as follows¹⁷

“Where a bill creates a criminal offence with provision for the penalty to be set by delegated legislation, the Committee would expect, save in exceptional circumstances, the maximum penalty on conviction to be included on the face of the bill. Therefore, where this is not the case, the memorandum should explain why not, and at the very least the Committee would expect the instrument to be subject to the affirmative procedure. Similarly, where the ingredients of a criminal offence are to be set by delegated legislation, the Committee would expect a compelling justification”.

34. The legislation that can be amended under the power also provides for civil penalties and sets the maximum amounts payable by way of such penalties. The power would therefore also appear to allow those maximum amounts

¹⁷ DPRRC, *Guidance for Departments*, para 12.

to be amended by regulations subject only to the negative procedure. Again, the Memorandum makes no mention of this.

35. **We recommend that—**

- **the House presses the Minister to explain why it is considered appropriate for clause 91 to confer power that would appear to allow—**
 - (a) a range of existing criminal offences to be amended,**
 - (b) new criminal offences to be created,**
 - (c) maximum penalties for criminal offences to be determined, and**
 - (d) maximum amounts payable by way of civil penalties to be set,**

by regulations subject only to the negative procedure; and

- **in the absence of a satisfactory explanation, the power in clause 91 is inappropriate.**

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

36. This Bill, which had its second reading in the House of Lords on 5 December, regulates competition in digital markets and makes provision for the protection of consumer rights. The Department for Business and Trade and the Department for Science, Innovation and Technology have provided us with a delegated powers memorandum (“the Memorandum”).¹⁸

37. We draw the attention of the House to five delegated powers in the Bill.

Clause 6—position of strategic significance

38. Clause 2(2)(b) allows the Competition and Markets Authority (“the CMA”) to regulate a designated undertaking in respect of digital activities if (among other things) the undertaking has a “position of strategic significance”.

39. Clause 6(1) states that an undertaking has a position of strategic significance in respect of a digital activity where one or more of the following conditions is met:

- (a) the undertaking has achieved a position of significant size or scale in respect of the digital activity;
- (b) a significant number of other undertakings use this digital activity in carrying on their business;
- (c) the undertaking’s position in respect of the digital activity allows it to extend its market power to a range of other activities;
- (d) the undertaking’s position in respect of the digital activity allows it to determine or substantially influence the ways in which other undertakings conduct themselves, in respect of the digital activity or otherwise.

40. Clause 6(2) allows the Secretary of State to rewrite clause 6(1) by varying the conditions. Because this is a Henry VIII power, the affirmative procedure is applicable.

41. The Memorandum¹⁹ offers the following justification for the Henry VIII power in clause 6(2):

- to adapt to changes in the market; and
- because of the potential for future technologies, patterns or business models to change.

42. Changes in markets happen constantly. If this were a reason for allowing ministers (rather than Parliament) to amend the Act, it would be a reason for converting even more of the Bill’s delegated powers into Henry VIII powers.

43. Furthermore, the conditions in clause 6(1) are not inherently technology-dependent or business-model-dependent. They relate to how significant an undertaking is in market terms, regardless of whether technology and patterns

¹⁸ Department for Business and Trade and the Department for Science, ‘Memorandum to the Delegated Powers and Regulatory Reform Committee on Digital Markets, Competition and Consumers Bill’ (November 2023): <https://publications.parliament.uk/pa/bills/cbill/58-03/0294/DelegatedPowersMemo.pdf> [accessed 7 December 2023]

¹⁹ Paras 25 and 26.

of business change or not. It is true that market developments might cause the CMA to alter its assessment whether a particular undertaking has substantial and entrenched market power or a position of strategic significance. But this is a factual matter that doesn't require the legal principles in clause 6(1) to be amendable by ministerial regulations.

44. **Given the Memorandum's unconvincing explanation for the clause 6(2) power, the House may wish to press the Minister for a fuller explanation. In the absence of a satisfactory explanation, we regard clause 6(2) as containing an inappropriate delegation of power that should be removed from the Bill.**

Clause 110—power to charge levy

45. Clause 110 contains a broad power for the CMA to charge undertakings it regulates. This levy will be set by rules made by the CMA, to which no parliamentary procedure applies. So far as Parliament is concerned, the CMA's only duty (when consulting) is to lay a draft of the rules before Parliament. The draft rules do not have to be debated or approved, and the finalised rules do not even have to be laid before Parliament.
46. The Memorandum²⁰ offers three reasons for not attaching any parliamentary procedure to the making of the rules.
- The principles for levy methodology are set out on the face of the Bill (clause 110(4)) and are thus transparent to industry, Parliament and other interested parties.
 - The absence of a parliamentary procedure does not preclude parliamentarians from tabling a motion to debate the content of the rules.
 - It would be disproportionate to provide any further parliamentary scrutiny beyond setting out the principles underlying the levy methodology contained in clause 110.
47. We are not convinced by these reasons.
48. First, innumerable regulation-making, order-making and rule-making powers in primary legislation contain constraints on the exercise of such delegated powers and yet still have a parliamentary procedure (negative, affirmative or super-affirmative) associated with their making.
49. Second, if a parliamentary procedure were unnecessary providing that the principles underlying the subordinate legislation are set out on the face of the Bill, little subordinate legislation would come with any parliamentary procedure at all.
50. Third, even if either House of Parliament were to debate the draft rules and pass a resolution disapproving them, the CMA would not be bound by the resolution. This is because *unless an Act of Parliament says otherwise* (and this Bill does not) mere resolutions of either House have no legal effect. Because the rules are not contained in a statutory instrument, the Statutory Instruments Act 1946 ("the 1946 Act") is inapplicable. Accordingly:

²⁰ Paras 103 and 104.

- The numbering, printing, citation and strict publication requirements of section 2 of the 1946 Act are inapplicable.
 - The procedure by which a negative instrument, if successfully prayed against, would automatically be rendered unenforceable under section 5(1) of the 1946 Act would not apply.
 - Although the Memorandum says that parliamentarians will be able to engage with a draft of the rules and will be consulted at a point that will allow for meaningful input, few individual parliamentarians have time to engage with highly technical rules that have not yet been made. This is one of the reasons why Parliament has specialist scrutiny committees. But these rules, not being contained in a statutory instrument nor subject to a parliamentary scrutiny procedure, would not fall within the remit of the main delegated legislation scrutiny committees - the Joint Committee on Statutory Instruments (JCSI) and the Secondary Legislation Scrutiny Committee (SLSC).²¹
51. Fourth, given that clause 298 applies the negative procedure to regulations setting fees for alternative dispute resolution accreditation, it seems reasonable that the negative procedure also applies to instruments requiring people to pay a levy to the CMA.
52. **We recommend that the rules made pursuant to clause 110 be made by statutory instrument, with the negative procedure being sufficient.**

Clause 204(1)—power to amend fixed or daily penalties

53. The Bill contains various powers for the CMA and the courts to impose monetary penalties on relevant persons: see clauses 157(5), 167(3)(a) and (b), 181(6), 189(3)(a) and (b), 192(3)(a) and (b) and 197(4). These powers all have carefully calibrated maxima. By way of example, clause 181(6) stipulates that a monetary penalty imposed under clause 181(4)(b) must be a fixed amount not exceeding £300,000 or, if higher, 10% of the total value of the turnover (if any) of the person being penalised.
54. Clause 204(1) allows the Secretary of State to amend any of those provisions for the purpose of substituting a different monetary amount for those contained in the Bill.
55. The Memorandum²² explains that this is “to avoid erosion of the real value of these maxima through inflation” so that the punitive and deterrent effects of the penalties are not diminished. However, this explanation does not carry across into the Bill itself. The power in clause 204(1) is open-ended and not limited to inflation-proofing. The Government could use the power in clause 204(1) to introduce inflation-exceeding increases in the various monetary penalties in the Bill. In turn this would allow ministers to override the carefully calibrated maxima set by Parliament without being limited to inflation-proofed increases.

21 The JCSI considers all statutory instruments, whether or not subject to a parliamentary scrutiny procedure, and any other instrument which is subject to the affirmative resolution procedure. The SLSC considers all instruments, whether or not statutory instruments, subject to a parliamentary scrutiny procedure.

22 Para 278.

56. **We recommend, consistently with the explanation set out in the Memorandum, that the power to amend the various monetary penalties mentioned in clause 204(1) can only be used to take into account changes in the value of money.**

Schedule 16, paragraph 16I(1)—power to amend fixed or daily penalties

57. Schedule 16, paragraph 16I(1) contains a similar power to the power in clause 204(1) and with the same rationale – to take into account changes in the value of money.²³ **We likewise recommend that the power to amend the various monetary penalties mentioned in paragraph 16I(1) of Schedule 16 can only be used to take into account changes in the value of money.**

Clause 231—right to redress

58. Clause 231 allows the Secretary of State to make regulations governing the statutory rights of consumers relating to unfair commercial practices. The regulations are wide-ranging in scope and cover matters such as monetary compensation, discounts, refunds and termination of contracts.
59. The Memorandum²⁴ states that the affirmative procedure is appropriate for the first exercise of the power to make regulations because those regulations will have the effect of replacing the private redress of the Consumer Protection from Unfair Trading Regulations 2008. However, the Memorandum adds:
- “Subsequent exercises of the power (in clause 231) will be amending or limiting the regulations and as such the negative procedure will provide an appropriate level of parliamentary scrutiny.”
60. We find this explanation unconvincing. Who is to say that subsequent exercises of the power in clause 231 will merely amend or limit the regulations? The Bill certainly does not; it is silent on the question. Just as there is nothing in the Bill to prevent the first exercise of the power being relatively cautious in policy terms, so also there is nothing to stop subsequent exercises of the power in clause 231 being more adventurous - revoking, re-making and extending (perhaps substantially) the original regulations.
61. We judge powers not on how the Government say that they will use them but on how any Government might use them. It is therefore not sufficient for the Government to say that subsequent exercises of the power will only amend and limit the original regulations. They could replace and extend the regulations within the powers given expressly by clause 231 (and impliedly by section 14 of the Interpretation Act 1978). **Accordingly, we recommend that the affirmative procedure should be applicable for all exercises of the power in clause 231, and not just the first exercise of the power.**

23 Para 292.

24 Para 328.

ARBITRATION BILL [HL]

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

CONVERSION THERAPY PROHIBITION (SEXUAL ORIENTATION AND GENDER IDENTITY) BILL [HL]

63. This private member's Bill does not contain any delegated powers.

SUCCESSION TO PEERAGES AND BARONETCIES BILL [HL]

64. This private member's Bill does not contain any delegated Powers.

EMPLOYMENT AND TRADE UNION RIGHTS (DISMISSAL AND RE-ENGAGEMENT) BILL [HL]

65. This private member's Bill does not contain any delegated powers.

HOUSING ACT 1988 (AMENDMENT) BILL [HL]

66. This private member's Bill does not contain any delegated powers.

ALTERNATIVE INVESTMENT FUND DESIGNATION BILL [HL]

67. This private member's Bill does not contain any delegated powers.

GENOCIDE (PREVENTION AND RESPONSE) BILL [HL]

68. This private member's Bill does not contain any delegated powers.

FOETAL SENTIENCE COMMITTEE BILL [HL]

69. This private member's Bill does not contain any delegated powers.

SCHOOLS (MENTAL HEALTH PROFESSIONALS) BILL [HL]

70. This private member's Bill does not contain any delegated powers.

AT-HOME EARLY MEDICAL ABORTION (REVIEW) BILL [HL]

71. This private member's Bill does not contain any delegated powers.

WORKFORCE INFORMATION (ETHNICITY) BILL [HL]

72. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

**COMMERCIAL ORGANISATION AND PUBLIC AUTHORITIES
DUTY (HUMAN RIGHTS AND ENVIRONMENT) BILL [HL]**

73. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

CORONERS (DETERMINATION OF SUICIDE) BILL [HL]

74. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

GENOCIDE DETERMINATION BILL [HL]

75. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

WHEELCHAIR ACCESS BILL [HL]

76. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

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 6 December 2023, Members declared no interests.

Attendance

The meeting was attended by Lord McLoughlin, Baroness Humphreys, Baroness Bakewell, Lord Hendy, Lord Janvrin, The Earl of Lindsay, Lord Rooker and Lord Carlile.