



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

7th Report of Session 2023–24

Victims and Prisoners Bill

Heritage Trees Bill [HL]

**Economic Activity of Public
Bodies (Overseas Matters) Bill**

**Protection of Care Recipients and
Carers Bill [HL]**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session, most recently on 8 November 2023, 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.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[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/hldprcpublications.

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Kiran Kaur (Committee Operations Officer).

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 to the Delegated Powers and Regulatory Reform Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Seventh Report

VICTIMS AND PRISONERS BILL

1. This Bill, which was brought from the House of Commons on 6 December 2023 and had its Second Reading on 18 December, makes provision for victims of crime and for the activities and release of prisoners. The Ministry of Justice has supplied us with a delegated powers memorandum (“the Memorandum”)¹ relating to the Bill’s delegated powers.
2. We draw attention to one delegated power in the Bill: clause 52(4) (application of certain Convention rights in prisoner release cases). Clause 52 applies to cases where a court is considering whether Convention rights have been breached in relation to a decision—under prisoner-release legislation—regarding whether a person should be released from custody. Clause 52(3) requires a court to give the greatest possible weight to the importance of reducing the risk to the public from persons who have committed offences in respect of which custodial sentences have been imposed.
3. Clause 52(4) defines “custodial sentence” to mean a sentence specified in negative procedure regulations made by the Secretary of State. The Memorandum has a section headed “justification for taking the power”. The first sentence (paragraph 153) is not a justification but a statement of the power itself. The second sentence is a statement of the purpose of the power (rather than its justification) even though there is a section on purpose that precedes the section on justification.
4. The Memorandum (paragraph 154) says that the technical meaning of “custodial sentence” differs between sentencing regimes and may change over time. Everything changes over time; that is not a reason for defining key legal terms in regulations rather than on the face of legislation. If it were, legal terms in every Act of Parliament would come with a Henry VIII power to amend them.
5. Moreover, where Parliament makes a major statement of principle—as in clause 52(3)—the statement should be intelligible from the Bill itself rather than having to await regulations before its full import can be understood.
6. **We regard the power in clause 52(4) to define “custodial sentence” as an inappropriate delegation of power that should be removed from the Bill.** The Memorandum (paragraph 154) says that the term “custodial sentence” has a generally recognised meaning. This being so, the meaning of “custodial sentence” should not be left to secondary legislation when prominent criminal statutes (the Criminal Justice Act 2003 and the Sentencing Act 2020) are able to define it with precision.
7. Not only is the justification for the delegated power unsatisfactory, the justification for the negative procedure is also unsatisfactory. The Memorandum (paragraph 155) says that the negative procedure is appropriate because regulations will contain technical detail, and the substance of the Bill will have been subject to full scrutiny during its passage.

1 [Memorandum](#) by the Ministry of Justice, dated 4 December 2023

8. We do not find these reasons compelling.
- The definition of “custodial sentence” is not a matter of technical detail. It is a major component of the principle in clause 52(3). Without regulations defining “custodial sentence”, the scope of the principle is unclear; indeed, the principle will be devoid of meaning until regulations are made. Depending on the meaning of “custodial sentence” the scope of the principle in clause 52(3) will change: the wider the meaning, the wider the scope.
 - This aspect of the Bill will *not* have been subject to full scrutiny. On the contrary, if someone were to press Ministers on how many convicted people will be affected by the principle in clause 52(3), Ministers must perforce reply that they cannot answer the question until regulations have been made defining “custodial sentence”.
9. **If (contrary to our earlier recommendation) the delegated power in clause 52(4) remains in the Bill, the affirmative procedure should apply to the making of the regulations rather than the negative procedure.**

PRIVATE MEMBERS' BILLS: INTRODUCTORY NOTE

10. This report sets out the Committee's observations in relation to a private member's Bill. It has long been, and remains, the Committee's approach to apply the same exacting standards of scrutiny to all bills, whether a government bill or a private member's bill. We acknowledge however that those members of the House who sponsor private members' bills, unlike ministers, do not have the support of departmental officials and Parliamentary Counsel in the preparation of their bills. Our comments on private members' bills are framed in the light of that understanding.

HERITAGE TREES BILL [HL]

11. This private member's bill, sponsored by Baroness Young of Old Scone, was introduced in the House of Lords on 5 December 2023. It seeks to promote the protection and stewardship of heritage trees in England.
12. Clause 3(4) contains an extensive regulation-making power requiring the Secretary of State to make provision in relation to heritage tree preservation orders made under clause 3(2) by the responsible planning authority (a term undefined in the Bill).
13. Clause 4(2) says that the first statutory instrument containing regulations under clause 3 must use the affirmative procedure. Clause 4(3) says that all other statutory instruments (whether made under clause 2 or clause 3) are to use the negative procedure.
14. This being a private member's bill, there is no delegated powers memorandum explaining why only the first statutory instrument containing regulations under clause 3 is subject to the affirmative procedure. We can only speculate. A reason sometimes given is that the first set of regulations will be important whereas subsequent regulations will be technical or otherwise of less importance. But this is often an unsatisfactory reason because there is usually nothing in the Bill (and there is certainly nothing in this Bill) to stop subsequent exercises of a regulation-making power being of greater width and significance than the first exercise.
15. **We draw attention to clause 4(2) of the Bill. The House may wish to ask the sponsor why only the first statutory instrument containing regulations under clause 3 is subject to the affirmative procedure.**

**ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS
MATTERS) BILL**

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

PROTECTION OF CARE RECIPIENTS AND CARERS BILL [HL]

17. 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 17 January 2024, Members declared no interests.

Attendance

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

