

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

36th Report of Session 2019–21

**Ministerial and other
Maternity Allowances Bill**

**Overseas Operations (Service
Personnel and Veterans) Bill:
Government Response**

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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

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Hendy](#)

[Lord Janvrin](#)

[Baroness Meacher](#)

[Lord Rowlands](#)

[Lord Tope](#)

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 and the fax number is 020 7219 2571. The Committee's email address is hldelegatedpowers@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 Sixth Report

MINISTERIAL AND OTHER MATERNITY ALLOWANCES BILL

1. This Bill contains no delegated powers.

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL: GOVERNMENT RESPONSE

2. We considered this Bill in our 30th Report of this Session.¹ The Government have now responded by way of a letter from the Rt Hon. Baroness Goldie DL, Minister of State at the Ministry of Defence. The response is printed at Appendix 1.

¹ [30th Report](#), Session 2019-21 (HL Paper 178).

APPENDIX 1: OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL: GOVERNMENT RESPONSE

I am writing in response to the Delegated Powers and Regulatory Reform Committee's thirtieth report, where the Committee provided its views on the delegated powers contained in the Overseas Operations (Service Personnel and Veterans) Bill.

I would firstly like to thank the Committee for its diligent work in considering the delegated powers contained in the Bill. The Government has carefully considered the reasons why the Committee concludes that clause 6(6) contains an inappropriate delegated power. In particular, it has considered the Committee's comments regarding the power to amend Schedule 1 being used to remove an "excluded offence" from that Schedule.

The intent of the power is to ensure the Government is able to respond to new developments and fresh concerns that may emerge in relation to potential offences on future overseas operations, without the need to seek primary legislation each time a change may be required. The power to remove offences from Schedule 1 is the natural complement to the power to add offences to Schedule 1.

As the Committee acknowledged, it is not unusual for an Act to confer a Henry VIII power to amend a list contained in a Schedule to an Act, and for the exercise of such a power to be subject to the affirmative procedure, to require express approval by both Houses of Parliament (as is the case with the power in Clause 6(6)).

The report concluded that this power can be distinguished, and is of particular significance, because it would allow changes which affect liability for criminal offences. I would like to stress that the Bill does not create any criminal offences, nor does it remove any. It does not create any type of immunity or amnesty nor fetter the discretion available to prosecutors to bring proceedings (subject to the consent of the Attorney General, which is not an unusual requirement and is necessary for the prosecution of certain other offences). Rather it changes the way that a prosecutor exercises his or her discretion in cases covered by the Bill, by introducing a new 'exceptionality' test (Clause 2) and a requirement that the prosecutor gives particular weight to certain matters (set out in Clause 3).

The sexual offences in Schedule 1 have been excluded from the measures in the Bill to reflect the Government's continued position that there can be no conceivable link between operational duties and the use of sexual violence and sexual exploitation on overseas operations. However, the exclusion of sexual offences does not mean that the Government will not continue to take other offences such as war crimes and torture extremely seriously. In the course of their duties on overseas operations, we expect our Service personnel to undertake activities which are intrinsically violent in nature. Where Service personnel are engaged in combat, detention, and interrogations, they have faced and will continue to face allegations, such as torture and war crimes, because of the unique nature of warfare. I therefore believe that the additional protections provided by the measures in Part 1 of the Bill are warranted in these circumstances but are not warranted in respect of allegations of offences of a sexual nature.

Finally, the Committee notes that changes to Schedule 1 have the potential to generate significant interest inside and outside Parliament, and torture is just one

example of a serious offence that could be added to, or (subsequently) removed from, Schedule 1.

Future amendments to the Schedule will still be subject to appropriate parliamentary scrutiny, via the affirmative procedure, meaning that Parliament may debate, approve or reject these as it chooses. If certain offences become the focus of wider public concern, and there is likely to be significant interest in any future changes to the offences listed in the Schedule, then it may be appropriate to engage with the public under these circumstances, for example, via a public consultation. The Government does not consider that it is necessary to set out a requirement to consult on the face of the Bill, as we do not want to be prescriptive in advance about the circumstances in which a public consultation may be necessary. However, where appropriate, a public consultation could give parliamentarians greater understanding of the public view of any proposed changes in particularly contentious circumstances.

Again, I would like to thank the Committee for its work in considering the Bill and I hope this information proves helpful.

15 February 2021

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hregister>. The Register may also be inspected in the Parliamentary Archives.