



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

5th Report of Session 2021–22

Charities Bill [HL]

**Environment Bill:
Government Response**

**Telecommunications
(Security) Bill: Government
Response**

Ordered to be printed 14 July 2021 and published 20 June 2021

Published by the Authority of the House of Lords

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](#) (Chair)

[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/hldprcpublications.

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.

Fifth Report

CHARITIES BILL [HL]

1. The Bill gives effect to recommendations made in a Law Commission report entitled “Technical Issues in Charity Law”.¹
2. The Bill includes provisions which either create new or affect existing powers to amend primary legislation. In six cases, the powers are unusually subject to the negative resolution procedure. Of these, five are concerned with amending a threshold, primarily a financial threshold, set out on the face of the Charities Act 2011. In general, the purpose of the threshold is to distinguish between those cases where charity trustees can take action without any regulatory oversight by the Charity Commission, and those cases where the action requires the approval of the Charity Commission before it can have effect. In one case, the purpose of the financial threshold is to determine the point at which the charity trustees can use donations for purposes different from those for which they were given, without obtaining the consent of the donor.
3. The relevant provisions of the Bill are as follows:
 - (a) *Clause 6* deals with the circumstances in which donations given for specific charitable purposes which fail may nevertheless be treated as given for charitable purposes generally. Where a donation is below £120 it can be so treated without the need to obtain the consent of the donor. There is power for the £120 figure to be amended by regulations.
 - (b) *Clause 7* enables charity trustees to determine by resolution how to apply donations, which were originally solicited for specific charitable purposes, for other charitable purposes where the donations are applicable *cy-près*. Such a resolution only requires the consent of the Charity Commission if the value of the donations exceeds £1,000. There is power for that amount to be amended by regulations.
 - (c) *Clauses 10 and 11* amend sections 281 to 284 of the Charities Act 2011. Those sections allow charity trustees to resolve to remove restrictions on the expenditure of capital of a permanent endowment. Conditions apply (including a financial threshold) which affect whether oversight of the Charity Commission is required for such a resolution. Those conditions are amended by the Bill, with a new financial threshold being specified. That financial threshold will continue to be capable of being amended by statutory instrument.
 - (d) *Clause 12* establishes new powers for charity trustees to borrow from a permanent endowment. Limits are imposed on the proportion of the endowment which may be borrowed, and the period over which the borrowing may take place. There is power for these limits to be amended by regulations.
 - (e) *Clause 15* enables charities to make small *ex gratia* payments without obtaining authorisation from the Attorney General, the court or the

1 Law Com No 375.

Charity Commission. Limits are placed on the amount of an *ex gratia* payment which can be made without authorisation. These limits depend on the size of a charity's income. There is power for the limits to be amended by regulations.

4. The Department gives two reasons for the negative resolution procedure to govern the exercise of the powers: the narrow scope of the powers, and the precedent of existing provisions of the Charities Act 2011 where the negative resolution procedure applies to similar powers to amend thresholds.
5. While we accept that the use of the negative resolution procedure is consistent with the current approach adopted in the Charities Act 2011, we are not convinced by the argument that the negative resolution procedure is appropriate because of the narrow scope of the powers. While in each case the exercise of the power is not capable of altering the fundamental policy, the power is still capable of having a significant impact on the way in which the policy works. There are no restrictions in any of the provisions on the extent to which the threshold can be changed, or on the purposes for which changes can be made. While the Government may not currently have any intention significantly to alter the thresholds, we have been consistent in our view that what is important is not how Government say powers will be exercised, but how powers are capable of being exercised.
6. We have therefore considered whether the fact that the use of the negative resolution procedure is consistent with the existing approach in the Charities Act 2011 should outweigh any considerations relating to the nature of the powers themselves, particularly having regard to the fact that these are Henry VIII powers.
7. We believe that greater weight should be given to the nature of the powers, particularly when considering the exceptional case of a Henry VIII power subject to the negative resolution procedure. In our guidance to Departments,² while acknowledging that the appropriate level of Parliamentary scrutiny for Henry VIII powers will not be the affirmative procedure in all cases, we make it clear that providing for the negative resolution procedure to apply is to be treated as exceptional and requires a full justification to be given. The example given in the guidance of an acceptable negative procedure Henry VIII power is a power to amend an amount *limited to uprating for inflation*. There is a clear distinction between that and the powers in the Bill to amend threshold amounts where the power is not limited in any way, and in particular is not limited to making changes to reflect changes in the value of money.
8. **Accordingly, we recommend that the Henry VIII powers referred to in paragraph 3 above should only be subject to the negative resolution procedure where the power is being exercised to reflect changes in the value of money, and that in any other case the affirmative resolution procedure should apply.**

2 Guidance for Departments on the role and requirements of the Committee (July 2014): <https://publications.parliament.uk/pa/ld5801/ldselect/downloads/Guidance-for-Departments.pdf>. See paragraph 35 and footnote 23.

ENVIRONMENT BILL: GOVERNMENT RESPONSE

9. We considered this Bill in our 3rd Report of this Session.³ The Government have now responded by way of a letter from the Rt Hon. the Lord Goldsmith of Richmond Park, Minister of State at the Department for Environment, Food and Rural Affairs. The response is printed at Appendix 1.

TELECOMMUNICATIONS (SECURITY) BILL: GOVERNMENT RESPONSE

10. We considered this Bill in our 4th Report of this Session.⁴ The Government have now responded by way of a letter from Baroness Barran, Minister for Civil Society at the Department for Digital, Culture, Media and Sport. The response is printed at Appendix 2.

3 [3rd Report](#), Session 2021–22 (HL Paper 16).

4 [4th Report](#), Session 2021–22 (HL Paper 29).

APPENDIX 1: ENVIRONMENT BILL: GOVERNMENT RESPONSE

Letter from the Rt Hon. the Lord Goldsmith of Richmond Park, Minister of State at the Department for Environment, Food and Rural Affairs, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

I would like to start by thanking you for your contributions and support during debates on the Environment Bill. I am especially thankful for your words during the fourth day of Committee on the Bill in which you discussed the DPRRC's report on the delegated powers within the Bill, and I am grateful to all members of the Committee for their scrutiny. As you mentioned, the DPRRC report was complimentary of the Bill and I believe the recommendations made by the Committee are sensible.

Therefore, I am pleased to inform you that the government will be accepting all recommendations made by the report. We will table government amendments to the Bill at Lords Report Stage to deliver these recommendations. The detail of the future government amendments is outlined below.

Recommendation 1: Requirement to publish guidance

The government will be tabling amendments in line with the recommendation that the following clauses of the Bill be amended to require guidance to be laid before Parliament:

- (a) Clause 56: Separation of waste
- (b) Clause 67: Littering enforcement
- (c) Clause 99: Content of local nature recovery strategies
- (d) Clause 102: Species conservation strategies
- (e) Clause 103: Protected site strategies

Recommendation 2: Vehicle recall implementation regulations—affirmative procedure

The government will be tabling amendments in line with the recommendation that Clause 73 of the Bill (a power to make regulations concerning the implementation of the vehicle recall provisions) is amended to change the procedure from negative to affirmative.

Recommendation 3: Valuation of land in drainage districts—Henry VIII power

The government will be tabling amendments in line with this recommendation that the power in Clauses 88 and 90 to make consequential amendments to any Act of Parliament is narrowed to only allow amendments to the Land Drainage Act 1991.

Recommendation 4: Biodiversity net gain—publication of biodiversity metric

The government will be tabling amendments in line with this recommendation that the Bill be amended to require the detail on the 'biodiversity metric' for biodiversity net gain to be laid before Parliament.

7 July 2021

APPENDIX 2: TELECOMMUNICATIONS (SECURITY) BILL: GOVERNMENT RESPONSE

Letter from Baroness Barran, Minister for Civil Society at the Department for Digital, Culture, Media and Sport, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

I am writing in response to the Delegated Powers and Regulatory Reform Committee's Fourth Report, which addressed the Telecommunications (Security) Bill. I thank the Committee for their diligent care in scrutinising the Bill and the related delegated powers memorandum, and I am grateful for their consideration and prompt recommendations ahead of the Second Reading of the Bill.

Clause 3: new section 105E (power to issue codes of practice about security measures etc.)

I have received the Report and carefully considered the Committee's recommendation that use of the power to issue codes of practice, as detailed in Clause 3, is subject to the negative procedure in Parliament. However, I do not believe it to be necessary.

There is already significant Parliamentary scrutiny built into the new telecoms security framework. The codes of practice are only one part of this framework, which consists of three layers. In the first layer, there are overarching security duties set out in primary legislation, which are being debated in Parliament through the Bill's passage. In the second layer, clauses 1 and 2 of the Bill already provide for specific security requirements to be set out in secondary legislation.⁵ This secondary legislation is already subject to Parliamentary scrutiny under the negative procedure. Given this existing secondary legislation, the Committee's recommendation would also to some extent duplicate this layer of the framework. This would not be necessary and could potentially confuse providers.

Whilst the codes of practice may have the effects that the Committee has highlighted, they are technical in nature. They will detail practical security measures relating to specific technology. Their intended audience is security professionals working for public telecoms providers; we need the codes to be able to be understood by that audience. They are not intended to be a formal piece of secondary legislation. We do not therefore believe they are suitable for the scrutiny that the Committee has recommended.

For these reasons, I am not able to accept the recommendation and I hope that the Committee is able to appreciate the rationale for not making an amendment to this power.

Once again, I would like to thank the Committee for their thoughtful consideration of this Bill and we will continue to ensure that the powers in the Bill are used appropriately.

13 July 2021

⁵ An illustrative draft of this secondary legislation was published in January 2021. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951726/Draft_Electronic_Communications_Security_Measures_Regulations.pdf

APPENDIX 3: 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 14 July 2021 Members declared the following interests:

Charities Bill [HL]

Baroness Meacher

Lord Janvrin

Lord Tope

Lord Hendy

Baroness Andrews

Trustees of various charities

Attendance

The meeting was attended by Baroness Andrews, Lord Blencathra, Baroness Browning, Lord Janvrin, Lord Goddard of Stockport, Lord Haselhurst, Lord Hendy, Baroness Meacher, Lord Rowlands and Lord Tope.