

HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

14th Report of Session 2021–22

**Age Assurance (Minimum Standards)
Bill [HL]**

Office of the Whistleblower Bill [HL]

Elderly Social Care (Insurance) Bill [HL]

**Higher Education Cheating Services
Prohibition Bill [HL]**

**Organ Tourism and Cadavers on Display
Bill [HL]**

Refugees (Family Reunion) Bill [HL]

Ordered to be printed 1 December 2021 and published 2 December 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

[Baroness Andrews](#)

[Lord Blencathra](#) (Chair)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Henty](#)

[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. 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.

Fourteenth Report

FOREWORD

1. This report sets out the Committee’s recommendations in relation to three private members’ Bills. 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.

AGE ASSURANCE (MINIMUM STANDARDS) BILL [HL]

2. This Bill is a private member’s Bill sponsored by Baroness Kidron. It was introduced in the House of Lords on 27 May and had its second reading on 19 November.
3. The Bill makes provision with respect to “age assurance systems”. These are systems or features that operate in relation to online or digital services or products and purport to estimate or verify the age, or age range, of users of such services or products. The Bill requires that any such system that operates in relation to an online or digital service or product used by consumers or operated in the United Kingdom must meet minimum standards published by Ofcom.¹
4. We draw the attention of the House to one delegated power in the Bill.

Clause 3(1)—power to make regulations granting Ofcom powers to enforce provision in the Bill

5. Clause 3(1) requires the Secretary of State to make regulations “granting Ofcom powers to enforce this Act”. Clause 3(2) provides that the regulations “must provide equivalent enforcement powers to those granted to the Information Commissioner in Part 6 of the Data Protection Act 2018”.
6. Part 6 of the Data Protection Act 2018 contains some 40 sections and introduces two Schedules that contain a total of 28 paragraphs. These create a substantial and detailed enforcement regime under which the Information Commissioner can investigate and sanction data protection breaches. The Commissioner is given wide-ranging powers, including—
 - to require information to be provided;
 - to require particular things to be done—or not to be done;
 - to enter and search premises, inspect equipment and seize documents and other material; and
 - to impose substantial financial penalties (up to £17.5 million or, if higher, 4% of an undertaking’s total annual worldwide turnover).

1 “Ofcom” is the Office of Communications, the regulator for the UK’s broadcasting, telecommunications and postal industries.

7. Part 6 also creates a number of criminal offences for such things as making false statements to the Commissioner and preventing the Commissioner from accessing information, documents or equipment.
8. **The Data Protection Act 2018 contains a detailed enforcement regime that gives the Information Commissioner wide-ranging and considerable powers to enforce data protection breaches. The Bill, by contrast, would leave a comparable enforcement regime for age assurance systems entirely to regulations—allowing such regulations to give Ofcom “equivalent” powers to those conferred on the Information Commissioner by primary legislation. Although the Bill provides for the regulations to be subject to the affirmative procedure, we consider that this is no substitute for the scrutiny afforded to the provisions of a Bill.**
9. **In our view, the regulation-making power in clause 3 should be replaced by detailed provision regarding enforcement on the face of the Bill.**

OFFICE OF THE WHISTLEBLOWER BILL [HL]

10. This Bill is a private member’s Bill sponsored by Baroness Kramer. It was introduced in the House of Lords on 20 May and had its second reading on 25 June.
11. The Bill places a duty on the Secretary of State to establish an Office of the Whistleblower, and to do so by regulations contained in an affirmative statutory instrument. The body’s principal duty is the administration of arrangements to facilitate whistleblowing.
12. By not establishing the body on the face of the Bill, nor limiting the scope of the regulation-making power, the Bill gives no indication as to the constitution or organisation of the body. For instance, the Bill is silent on such matters as: the body’s status (Crown body, non-departmental public body, non-Ministerial government department, private corporation); how many members it would have, appointed by whom and for how long, and on what terms of service and remuneration; record-keeping obligations; account and audit; fees and charges.
13. **In our view the regulation-making power in clause 1(1) should be replaced by transparent legislative provision regarding the creation and constitution of the Office of the Whistleblower.**

ELDERLY SOCIAL CARE (INSURANCE) BILL [HL]

14. This Bill is a private member’s Bill sponsored by Lord Lilley. It was introduced in the House of Lords on 24 May and had its second reading on 16 July.
15. The Bill seeks to establish the Public Social Care Insurance Body, to provide insurance for homeowners at cost against the risk of selling their homes to pay for elderly social care. Although this Bill contains provisions about the powers and duties of the new body and its status as Government-owned and not for profit, the body would also be created by regulations contained in an affirmative statutory instrument. The Bill is silent, as is the scope of the regulation-making power, on the detailed constitutional and organisational arrangements of the new body.

16. **In our view the regulation-making power in clause 1(1) should be replaced by transparent legislative provision regarding the creation and constitution of the Public Social Care Insurance Body.**

**HIGHER EDUCATION CHEATING SERVICES PROHIBITION
BILL [HL]**

17. This Bill contains no delegated powers.

ORGAN TOURISM AND CADAVERS ON DISPLAY BILL [HL]

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

REFUGEES (FAMILY REUNION) BILL [HL]

19. There is nothing in this 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/hregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 1 December 2021 Members declared the following interests:

Elderly Social Care (Insurance) Bill [HL]

Baroness Browning

Holder of a lasting power of attorney

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.