HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

19th Report of Session 2021–22

Commercial Rent (Coronavirus) Bill

Nuclear Energy (Financing) Bill

Digital Economy Act 2017 (Commencement of Part 3) Bill [HL]

Representation of the People (Young People's Enfranchisement) Bill [HL]

Local Government (Disqualification) Bill

Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Bill

Education (Careers Guidance in Schools) Bill

National Insurance Contributions Bill: Government Response

Nationality and Borders Bill: Government Response

Police, Crime, Sentencing and Courts Bill Government Amendments: Government Response

Health and Care Bill: Further 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.

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Lord Cunningham of Felling
Lord Goddard of Stockport
Lord Haselhurst
Lord Hendy
Lord Janvrin
Lord McLoughlin (Chair)
Baroness Meacher
Lord Rooker
Lord Tope

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Contacts for the Delegated Powers and Regulatory Reform Committee

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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.

Nineteenth Report

COMMERCIAL RENT (CORONAVIRUS) BILL

1. This Bill was passed by the House of Commons on 12 January. It was introduced in the House of Lords on 13 January and had its second reading on 27 January.

2. The purpose of the Bill[1] is "to support landlords and tenants in resolving disputes relating to rent owed by businesses which were required[2] to close during the COVID-19 pandemic". It "enables arbitration to be used to resolve these disputes if landlords and tenants cannot agree a way forward".

3. The Bill allows a landlord or a tenant to refer a dispute to arbitration by a suitably qualified and independent arbitrator appointed by a body approved by the Secretary of State. The Bill sets out the arbitration process, making provision for landlords and tenants to state their case, for the types of award an arbitrator can make and the principles that govern such awards.

4. The Department for Business, Energy and Industrial Strategy has provided a Delegated Powers Memorandum ("the Memorandum").[3] We draw one delegated power to the attention of the House.

Clause 27—power to apply Act in relation to future periods of coronavirus control

5. The Bill applies only in relation to business closures which took place during the following periods[4]—

   - 21 March 2020 to 18 July 2021 (for businesses in England); and
   - 21 March 2020 to 7 August 2021 (for businesses in Wales).

6. However, clause 27 gives the Secretary of State power to make regulations that provide for the Bill[5] "to apply again in relation to rent debts under business tenancies affected by closure requirements … imposed as a public health response to … coronavirus". This allows the Bill to apply in relation to future periods of coronavirus control. The regulations are subject to the affirmative procedure.[6]

7. But this is much more than just a power to provide for the Bill in its existing form to apply in relation to future periods of coronavirus control. This is because clause 27(3) allows the regulations to—

   - specify provisions of the Bill which are *not* to apply;
   - provide for provisions of the Bill to apply *with modifications*; and

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1 See para 1 of the Explanatory Notes to the Bill.
2 By regulations made under section 45C of the Public Health (Control of Disease) Act 1984 (see clause 4(2) and (6)).
3 Memorandum by the Department for Business, Energy and Industrial Strategy (undated).
4 See clause 4(2)(b) (definition of "relevant period").
5 With the exception of clause 27 itself.
6 See clause 27(4)(b).

- make different provision for different purposes (including different provision for England and for Wales).

8. This means that the regulations could provide for a very different version of the Bill to apply in relation to future periods of coronavirus control. For example, the regulations could—

- modify the arbitration process (for example, by removing the right to an oral hearing[7]);
- change the principles that govern the making of arbitration awards;[8]
- limit the types of award that an arbitrator can make;[9] or
- limit the availability of awards (for example, so that they could only be made in relation to certain kinds of businesses, or periods of closure of a particular length).

9. The Memorandum does not explain why the Bill contains such a highly unusual Henry VIII power giving ministers so broad a discretion to re-write primary legislation. It simply states that "the power enables specification of the provisions to apply, so that only those aspects necessary need be applied, and with modifications to work in the context of the future situation".[10]

10. Had the Bill instead contained a power that would allow it to apply in relation to future periods of coronavirus control coupled with a limited power to make the necessary changes to those provisions that currently limit its application to periods in 2020 and 2021, we may have found this unobjectionable. However, we are concerned that clause 27 instead gives ministers a very broad discretion to change how the Bill would work in relation to future periods of coronavirus control. It would allow changes of a kind that would give rise to serious policy issues and which we consider ought not to be a matter for secondary legislation.

11. **Accordingly, we consider that clause 27 contains an inappropriately wide delegation of power and that clause 27(3) in its current form should therefore be removed from the Bill.**

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7 See clause 20.
8 See clauses 15 and 16.
9 The Bill allows an arbitrator to require (a) the whole or part of a debt to be written off, (b) time to be given to pay the whole or part of a debt, and (c) interest payable in relation to a debt to be reduced (including to zero) (see clause 6(2)).
10 See para 24 of the Memorandum.

NUCLEAR ENERGY (FINANCING) BILL

12. There is nothing in this Bill which we would wish to draw to the attention of the House. We wish, however, to commend the Department for Business, Energy and Industrial Strategy for the quality of the Delegated Powers Memorandum provided in respect of this Bill.

DIGITAL ECONOMY ACT 2017 (COMMENCEMENT OF PART 3) BILL [HL]

13. There is nothing in this Private Member's Bill which we would wish to draw to the attention of the House.

REPRESENTATION OF THE PEOPLE (YOUNG PEOPLE'S ENFRANCHISEMENT) BILL [HL]

14. This Private Member's Bill contains no delegated powers.

LOCAL GOVERNMENT (DISQUALIFICATION) BILL

15. There is nothing in this Private Member's Bill which we would wish to draw to the attention of the House.

TAXIS AND PRIVATE HIRE VEHICLES (SAFEGUARDING AND ROAD SAFETY) BILL

16. This Private Member's Bill contains no delegated powers.

EDUCATION (CAREERS GUIDANCE IN SCHOOLS) BILL

17. This Private Member's Bill contains no delegated powers.

NATIONAL INSURANCE CONTRIBUTIONS BILL: GOVERNMENT RESPONSE

18. We considered this Bill in our 11th Report of this Session.[11] The Government have now responded by way of a letter from Viscount Younger of Leckie, Lord in Waiting (HM Household) (Whip). The response is printed at Appendix 1.

NATIONALITY AND BORDERS BILL: GOVERNMENT RESPONSE

19. We considered this Bill in our 18th Report of this Session.[12] The Government have now responded by way of a letter from Baroness Williams of Trafford, Minister of State at the Home Office. The response is printed at Appendix 2.

11 11th Report, Session 2021-22 (HL Paper 102).
12 18th Report, Session 2021-22 (HL Paper 141).

POLICE, CRIME, SENTENCING AND COURTS BILL GOVERNMENT AMENDMENTS: GOVERNMENT RESPONSE

20. We considered the Government amendments to this Bill in our 16th Report of this Session.[13] The Government have now responded by way of a letter from Baroness Williams of Trafford, Minister of State at the Home Office. The response is printed at Appendix 3.

HEALTH AND CARE BILL: FURTHER GOVERNMENT RESPONSE

We considered this Bill in our 15th Report of this Session.[14] We received a Government Response to the Bill which we published in our 16th Report of this Session.[15] The Government have written a further response by way a letter from Lord Kamall, Parliamentary Under Secretary of State for Innovation (Lords) at the Department of Health and Social Care. The response is printed at Appendix 4.

13 16th Report, Session 2021-22 (HL Paper 139).
14 15th Report, Session 2021-22 (HL Paper 133).
15 16th Report, Session 2021-22 (HL Paper 139).

APPENDIX 1: NATIONAL INSURANCE CONTRIBUTIONS BILL: GOVERNMENT RESPONSE

Letter from Viscount Younger of Leckie, Lord in Waiting (HM Household) (Whip), to The Rt Hon. the Lord Blencathra, Former Chair of the Delegated Powers and Regulatory Reform Committee

I am writing in response to the Delegated Powers and Regulatory Reform Committee's Eleventh Report, which addressed the National Insurance Contributions Bill. I would like to thank the Committee for its diligent care in scrutinising the Bill.

The Report makes a number of recommendations relating to the new regulation making powers in Clauses 3(1), 3(2), 3(3), 6(6) and 10(2) of the Bill, which I will now address.

Clauses 3(1) and 6(6)—powers to extend the end date of the relief for Freeport employers and employers of veterans

The Committee has recommended that the power to extend the relief for Freeport employers and employers of veterans should be subject to the affirmative procedure, rather than the negative procedure. These powers provide flexibility for the Government to extend the reliefs past their current end date. In particular, the power in relation to the Freeports relief will allow the Government to extend the relief after a review into its effectiveness in meeting its policy intention in 2026, although no further than 5 April 2031. Before they are extended the Government will carry out an evaluation of the reliefs to ensure they are effective. Once they have been evaluated and should the Government's view be that the reliefs should be extended, the negative procedure offers the opportunity for sufficient Parliamentary scrutiny without using more of Parliament's time than is necessary.

Clause 3(2)—power to treat a condition of the Freeport relief as being met

This provides the Government with a power to stipulate in secondary legislation circumstances in which conditions are to be treated as being met. The Committee has recommended that this power is subject to the draft affirmative procedure, rather than the negative procedure.

While I understand the Committee's concerns, I believe that the power should continue to be subject to the negative procedure. As with clauses 3(1) and 6(6) the power is wholly relieving and, as set out above, where this is the case regulations are usually subject to the negative procedure. In addition, the power cannot be used to decrease the amount of relief that an employer can claim.

In terms of how the power may be used, the Department's Delegated Powers Memorandum gave an example of cases where people with certain protected characteristics are unable to meet the rule that to be eligible for the relief employees must spend at least 60% of their working time in the Freeport site. For example, a health condition which may mean an individual needs to just work from home for periods of time. In case the Committee finds it helpful I attach a draft of these regulations that are intended to take effect on 6 April 2022. The effect of these regulations is to treat the 60% as being met so that the relief applies to employees who may not otherwise qualify.

In this case, the negative procedure also allows the Government to react quickly if there are external factors that would inhibit employers qualifying for this relief.

For example, if the relief had commenced prior to April 2020, employees required to work from home during the Coronavirus pandemic would not have qualified for the relief.

Clause 3(3)—power to modify Freeport employment conditions

The Committee has recommended that this power, which may amend Part 1 of the Bill and which is subject to the draft affirmative procedure, should be restricted to specified purposes only. An example of when this power could be used is provided in the department's Delegated Powers Memorandum of ensuring compliance with the UK's international subsidy control obligations. The subsidy control landscape in this case is complicated, uncertain and difficult to predict and the power needs to be capable of dealing with a wide range of possibilities. The Government believes it would be difficult to narrow it but at the same time allowing it to be flexible enough to deal with a wide range of possibilities within the subsidy control landscape.

It may help the Committee if I also explain what in the Government's view is a precedent for this power using section 5(1)(b) of the National Insurance Contributions Act 2014. This power provides a power exercisable by the Treasury to make regulations to add, reduce or modify the cases in which a person cannot qualify for an employment allowance or in which liabilities to pay secondary Class 1 NICs are excluded liabilities. It enables the Treasury to make changes to sections 2 and 3 and Schedule 1 of that Act.

In the Department's Delegated Powers Memorandum for the NICs Act 2014, the Department's justification for the draft affirmative procedure was that the effect of regulations could limit those who are eligible for the allowance, or the amount of employer NICs that could be taken into account for the purposes of the allowance. An example provided was that it was considered that such a power was necessary to either loosen or tighten the connected person rule for the allowance, with any tightening or loosening of the rule having consequences for companies and charities and their eligibility for the allowance. The Department considered was justified. The Committee's 18th Report of Session 2013-14 considered the delegated powers in the NICs Act 2014 but did not comment on the power in section 5(1)(b) of the then Bill.

The power in section 5(1)(b) has so far been used three times1, including to exclude companies with employer NICs over £100,000 to focus the relief on small businesses. This policy change was not foreseen at the time the power was introduced and, if there had been a similar restriction on the face of the legislation on the use of the power, such a change would have subsequently required primary legislation. This could have risked a delay to implementing the policy as, unlike Finance Bills, NICs Bills are not guaranteed to be annual.

In view of the above and that similar powers are also included in Finance Act 2021, the Government believes the draft affirmative procedure remains appropriate.

Clause 10(2)(d)—designation of self-isolation support schemes to be exempt from self-employed NICs

The Committee has recommended that this power is subject to the negative procedure, rather than no procedure. I am grateful for the Committee's comment but the Government believe that no procedure remains appropriate.

It may help the Committee if I explain some of the context to this power. Lump sum payments of £500 are available to be claimed under separate schemes in England, Wales and Scotland for people who have been asked to self-isolate by the relevant authority who cannot work from home and will suffer financial consequences as a result (subject to the eligibility criteria of the relevant scheme). Payments are intended to provide additional financial support to those on low incomes so they can self-isolate and help stop the spread of coronavirus. The scheme in England was piloted on a limited basis from 1 September 2020, then rolled out nationally from 28 September 2020. The schemes in Scotland and Wales began in October 2020.

Regulations have already been introduced2 under existing powers in section 3 of the Social Security Contributions and Benefits Act 1992 to exempt these payments from NICs for employees and their employers. Therefore, all clauses 10(1) and (2)(a) to (c) do is specify that the schemes specified are also to be exempt from self-employed NICs, ensuring consistency.

The Government believes that power designating self-isolation support schemes to be exempt from self-employed is narrowly drawn in that such schemes have to provide support for those who cannot work due to self-isolation. In addition, the Government's intention is that it will only use this power where further regulations are made to exempt payments from possible future similar schemes from NICs for employees and their employers.

The Government is also of the view that as the power to designate is also necessary to be able to respond to the changing circumstances of the Coronavirus pandemic as quickly as possible, and therefore the current parliamentary procedure is right given the current circumstances and means that the legislation can be introduced more quickly than a statutory instrument subject to the negative procedure.

I hope that the Committee and the House as a whole find this response useful in their further consideration of the Bill. I am copying this letter to Lord Tunnicliffe and Baroness Kramer and placing a copy of this letter in the Library of the House.

17 January 2022

APPENDIX 2: NATIONALITY AND BORDERS BILL: GOVERNMENT RESPONSE

Letter from Baroness Williams of Trafford, Minister of State at the Home Office, to the Rt Hon. the Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

Thank you for your report following the Committee's scrutiny of the provisions of the Nationality and Borders Bill ("the Bill"). We have carefully considered the Committee's recommendations regarding clauses 11, 26, 68 and Schedule 4. Our response to each of these points is set out below.

Clause 11(8)—Differential treatment of refugees

The Committee's recommendation

> "Given the clause's significance and the controversy surrounding it, we consider that, where it is proposed to amend the immigration rules to make different provision for different groups of refugees, the amendment should be subject to the draft affirmative procedure so that it cannot come into force until approved by both Houses."

Government response

I note that the Committee do not disagree that it is appropriate for the implementation of differentiation to be done through the Immigration Rules because other related areas such as type of leave, length of leave, and refugee family reunion are also done through the Rules. However, I do not consider that the provisions on differentiation to be made in the immigration rules should, in contrast to other provisions in the Immigration Rules, be subject to a higher level of scrutiny. The Immigration Rules are already subject to their own procedure set out under s.3(2) of the Immigration Act 1971. Parliamentarians may pray against them within a 40 day period of laying.

Clause 26—Accelerated detained appeals

The Committee's recommendation

> "The structure of clause 26 is to leave a significant element of the description of the cases to which the accelerated procedures are to apply to be set out solely in regulations. If the views expressed in the memorandum are right, this element of the description is liable to cover a wide range of matters. In the circumstances, we consider that the power should be subject to the affirmative resolution procedure."

Government response

Clause 26 sets out cohort criteria for appeals which will be heard by the Tribunal as "accelerated detained appeals", in accordance with procedural rules to be drafted by the Tribunal Procedure Committee. One of the criteria is that the decision be of a type set out in regulations by the Secretary of State. The Department's Memorandum explained that the purpose of the power was to apply "decision type" criteria which may change over time. Decision type criteria are likely to include decisions made at specified places of detention, to ensure both access to legal advice and reasonable proximity to Tribunal hearing centres. The regulations are also likely to specify types of decisions by reference to the type of claim made, e.g. a decision on a first-time asylum claim.

I note the Committee's concerns about the description of the scope of the regulation in the memorandum compared to the wording in Clause 26. I am grateful to the Committee for bringing this to my attention. By way of clarification, I can confirm that the regulations would not be expected include provision for certification procedures as was referred to in paragraph 34 of the memorandum. This was an error and we concede that the wording of the power would not cover such matters. I will ensure that this point is addressed during the Committee Stage of the Bill.

As explained in the Department's Memorandum, the purpose of the regulation will be to constrain the powers provided to the Secretary of State through the Bill, not to extend them. The Committee has suggested that the negative resolution procedure would not provide the appropriate level of scrutiny. We hope that in light of the clarification provided above as to what the regulations are expected to include (and what we agree they will not), you will now be content with our position in this regard. While I wish to ensure that all the measures in this Bill are subject to sufficient scrutiny, and welcome the Committee's views on this matter, I am not persuaded that a change of procedure is required for this particular measure.

It is important to note that the Clause as drafted makes clear both that the appeals process will be created by Tribunal Procedure Rules to be prepared by the Tribunal Procedure Committee, and that it will include express provision that the Tribunal should be able to remove an appeal from the accelerated detained appeals route, where the Tribunal is satisfied that is the only way to secure that justice is done. This provides an important safeguard against any potential overreach of executive power. It is in the Government's interest to ensure that the ADA policy is implemented in a way which, in the view of the Tribunal, ensures that justice is done.

Clause 68—Power to define "victim of slavery" and "victim of human trafficking"

The Committee's concern

> "We consider this to be inappropriate. The policy is for the definitions of the terms "victim of human trafficking" and "victim of slavery" to reflect the provisions of Article 4 of ECAT and Article 4 of the ECHR. And the reason for providing for the terms to be defined in regulations is solely based on this policy. Nothing is said to explain why Ministers are being given an unlimited discretion to decide how the terms are defined, and given their importance to Part 5 of the Bill we consider such a power to be inappropriate."

Government response

Clause 68 is vital in providing legislative clarity across the modern slavery clauses in Part 5 of the Bill and in underpinning the provisions that rely on the identification of possible and confirmed victims of modern slavery. The Clause creates a regulation making power for the Secretary of State to define "victim" in the modern slavery context, to underpin the provisions which rely on the identification of possible and confirmed "victims".

Whilst the Clause does confer the power on the Secretary of State to define in secondary legislation a "victim of slavery" and "victim of human trafficking", these definitions will be drafted in a manner that is compatible with our international obligations, including those under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) and the European Convention on Human Rights (ECHR).

The Committee raised concerns that Ministers are being given an unlimited discretion to decide how terms are defined. Whilst the Clause does give the power to make regulations, this is not providing Ministers with unlimited discretion. These regulations will be subject to affirmative Parliamentary procedure and will receive the appropriate scrutiny across both Houses in order to secure the prior approval of each House of Parliament before they can be made. We are of the view that regulations, subject to the affirmative procedure, are the right place to do this to enable flexibility in the future to amend definitions in line with changes in this nascent and developing area of law. We will also continue to work with stakeholders to ensure that the provisions in the Bill are effective and the terms are accurately depicted.

Paragraph 3 of Schedule 4—Penalty for failure adequately to secure a vehicle

The Committee's recommendation

> "In the circumstances, we consider that that the affirmative resolution procedure offers a more appropriate level of scrutiny for the powers conferred by new section 31A(4)."
>
> "This Committee has expressed the view in the past that, where the maximum for a fine or other penalty is to be set in subordinate legislation, rather than on the face of the primary legislation, then the affirmative procedure should apply. We see no reason for departing from that view here. Accordingly, we recommend that the power in section 31A(7) to set the maximum penalty should be subject to the affirmative resolution procedure."

Government response

Regulations to be made under the new section 31A(4) are of a technical and administrative nature (i.e. setting vehicle security standards) following public consultation with appropriate persons (i.e. haulage industry). Given their primarily technical nature, we consider the negative procedure is appropriate.

Regulations to be made under the new section 31A(7) mirror those that already sit on the statute at section 32(2A) of the Immigration and Asylum Act 1999, and which are made subject to the negative procedure. We consider it appropriate to use the negative procedure, which provides an appropriate level of scrutiny.

May I reiterate my gratitude to you and the Committee for your engagement on the Bill. I hope that the Committee is reassured by the points set out above and I look forward to continuing to work with the Committee constructively during the remaining stages of the Bill's passage.

26 January 2022

APPENDIX 3: POLICE, CRIME, SENTENCING AND COURTS BILL GOVERNMENT AMENDMENTS: GOVERNMENT RESPONSE

Letter from Baroness Williams of Trafford, Minister of State at the Home Office, to the Rt Hon. the Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

Thank you for your Committee's report dealing with the Government amendments to the Police, Crime, Sentencing and Courts Bill tabled for Report Stage. The Government has carefully considered the Committee's recommendations and our response is set out below.

The Committee's recommendation:

> We are disappointed that the Home Office seeks to justify the use of the negative procedure not by reference to the nature of the power itself but instead by reference to "the Government's general approach to statutory guidance and Codes of Practice". We do not consider this to be acceptable: this Committee—and Parliament—are entitled to expect that every power in every bill is instead considered on its merits.
>
> We consider that, unless the Minister can provide a convincing justification for the affirmative procedure applying only to the first exercise of the power to issue a code of practice—and the negative procedure applying to any subsequent exercise of that power, the affirmative procedure should instead apply in all cases.

Government Response:

We can assure the Committee that we have given careful consideration to the appropriate level of parliamentary scrutiny for the non-crime hate incident (NCHI) Code of Practice. 2

We believe that it is entirely appropriate for the Code of Practice to be subject to the affirmative procedure in the first instance, with the negative procedure applying thereafter. Utilising the affirmative procedure for the first iteration will allow the fundamental premise of the Code to be expressly agreed by Parliament. It will also provide both Houses with the ability to confirm that they are content that the Code fully reflects the recent Court of Appeal judgment in the Harry Miller v College of Policing case that was handed down on 20 December 2021.

There are clear precedents whereby Codes of Practice are initially subject to the affirmative procedure, with the negative procedure applying thereafter to any subsequent reissues. There are at least three examples of this in the Digital Economy Act 2017, at sections 43, 46 and 70.

Making the initial iteration subject to the affirmative procedure, with the negative applying thereafter, is an approach that has been previously recommended by the Delegated Powers and Regulatory Reform Committee. In paragraph 38 of its 13th Report of the 2016-17 session, on the Digital Economy Bill, the Committee said:

> "We recommend that the first code made under clause 36 should have to be laid before Parliament in draft, and not brought into force until it has been approved under the affirmative procedure. However, we would regard a draft negative Parliamentary procedure as adequate for any revisions of the code".

We believe that it is appropriate for the future revisions of the Code of Practice to be subject to the negative procedure. Notwithstanding the Committee's remarks, it does appear to us to be relevant that this is the level that is, in appropriate cases, applied to other analogous statutory guidance and codes of practice. For example, this includes the four separate codes drafted by the Information Commissioner's Office and laid before Parliament by the Secretary of State pursuant to sections 121 and 124 of the Data Protection Act 2018.

The negative procedure will allow any Parliamentarian who has concerns about a future iteration of the NCHI Code of Practice to pray against it, thus allowing appropriate parliamentary oversight. This approach also recognises that future iterations of the Code may not contain significant variations from the previous version. We do not anticipate that there will be further major rulings on the topic of non-crime hate incidents; any further changes to the Code are likely to thus simply reflect the routine need periodically to review such guidance. As such, we are of the view that it would be disproportionate, and not the best use of Parliamentary time, to require the affirmative procedure to be applied.

Given this, we maintain the view that the first iteration of the NCHI Code of Practice should be subject to the affirmative procedure, and that later iterations should be dealt with through the draft negative procedure.

24 January 2022

APPENDIX 4: HEALTH AND CARE BILL: FURTHER GOVERNMENT RESPONSE

Letter from Lord Kamall, Parliamentary Under Secretary of State for Innovation (Lords) at the Department of Health and Social Care, to the Rt Hon. the Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

Thank you once again for your scrutiny and report on the provisions of the Health and Care Bill ("the Bill").

Following my letter of 10 January, in response to matters raised in the Committee's report, we have since identified an inconsistency between the Delegated Powers Memorandum and the Bill itself relating to clause 15, for which I apologise.

The Committee's recommendation noted that: "**If Ministers wish to repeal section 14Z31 by regulations and substitute alternative text, they should use the affirmative resolution procedure rather than the negative**."

On subsequent review, I can confirm that the affirmative resolution procedure is already proposed in clause 15 for this power.

As I noted in my initial response, there are currently no intentions to enact these regulations and change the basis on which Integrated Care Boards are responsible for arranging services for people. Nevertheless, should these provisions be explored in the future, we remain committed to ensuring that Parliament has appropriate oversight and the ability to scrutinise any such change to the ICB's responsibilities and will also ensure the system is fully engaged with any such proposed changes.

I apologise for this error in the delegated powers memorandum but hope the Committee is reassured that its recommendation for the affirmative procedure to be used in regard to regulations made under clause 15(4) is already proposed in the Bill.

May I reiterate my gratitude to the Committee for its engagement on the Bill and for the important issues that it has raised.

31 January 2022

APPENDIX 5: 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 2 February 2022 Members declared no interests.

Attendance

The meeting was attended by Baroness Browning, Lord Janvrin, Lord Goddard of Stockport, Lord Haselhurst, Lord Hendy, Lord McLoughlin, Baroness Meacher, Lord Rooker and Lord Tope.