HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

3rd Report of Session 2014–15

Consumer Rights Bill

Criminal Justice and Courts Bill

Divorce (Financial Provision) Bill [HL]

Medical Innovation Bill [HL]

Parliamentary Privilege (Defamation) Bill [HL]

Serious Crime Bill [HL]: Government Response: Clause 67

Armed Forces (Service Complaints and Financial Assistance) Bill [HL]: Government Response

Infrastructure Bill [HL]: 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 15 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 are:

Baroness Andrews
Lord Bourne of Aberystwyth
Baroness Drake
Baroness Farrington of Ribbleton
Baroness Fookes
Countess of Mar
Lord Marks of Henley-on-Thames
Baroness O'Loan
Viscount Ullswater
Baroness Thomas of Winchester (Chairman)

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Publications

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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 dprr@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 other acts specified in the Committee's terms of reference

Third Report

CONSUMER RIGHTS BILL

1. The Bill, which had its Second Reading on 1 July, is in three parts. Part 1 makes provision for regulating consumer contracts for goods, digital content and services. Part 2 makes provision about unfair contract terms, including enforcement of the law on unfair contract terms. Part 3 covers a number of areas. These are investigatory powers; amendment of the Weights and Measures (Packaged Goods) Regulations 2006; amendment of the Enterprise Act 2002 to make provision for enhanced consumer measures; private actions in competition law; and the duty of letting agents to publicise fees. The Department for Business, Innovation and Skills has provided the Committee with a memorandum explaining the delegated powers in the Bill.[1]

Clause 85 – Power to impose functions on local authorities

2. Clause 81 imposes a duty on letting agents to publicise details of relevant fees (as defined in clause 83). Clause 85(1) allows the Secretary of State to make regulations which impose functions on a local authority in connection with the enforcement of the duty in clause 81, and which make provision for civil penalties to be imposed. The power to make regulations with respect to the imposition of civil penalties is subject to a first time affirmative procedure, thereafter it is subject to the negative procedure. The separate power to impose functions on a local authority in connection with enforcement is subject to the negative procedure in all circumstances.

3. Although clause 85 contains detailed provision, in subsections (5) to (9), as to the matters to be included in the regulations dealing with civil penalties, there is nothing in clause 85 to indicate, or indeed to limit, what may be covered in the regulations imposing functions on local authorities. In paragraph 93 of the memorandum, the Department explains that the reason for conferring the power to impose functions on local authorities is to enable the Secretary of State to decide which, out of local weights and measures authorities and local housing authorities, is the most appropriate enforcement authority. Nothing is said however about the *nature* of the functions it is intended to impose on local authorities using these powers. A precedent is given for the use of the negative procedure for the power: in particular, reference is made to the power to confer enforcement functions on local authorities under section 85(4) of the Enterprise and Regulatory Reform Act 2013. But we note that, contrary to what is said in the memorandum, powers conferred by section 85 of the 2013 Act are subject to the affirmative procedure: see section 88(3)(a)(i).

4. **It seems to us that clause 85(1)(a) confers what are potentially very broad powers, without any sufficient explanation given by the Department as to what the powers are to be used for. Accordingly, we consider that the powers conferred by clause 85(1)(a) should be subject to the affirmative procedure.** We are strengthened in this view by

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1 http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and regulatory-reform-committee/bills-considered/

the fact that the provision given by the Department as a precedent is also subject to the affirmative procedure.

Clause 87 – Power to make consequential provision by otherwise modifying primary legislation

5. Clause 87(1) enables the Secretary of State by order to make provision in consequence of the Bill. By virtue of subsection (2) the power to make consequential provision includes a power to "amend, revoke or *otherwise modify*" any provision made by or under an enactment (including one in an enactment or instrument passed or made in the same Session). Generally an order under clause 87 is subject to the negative procedure; but where the order amends, repeals or revokes any provision of primary legislation it is subject to the affirmative procedure.

6. No explanation is given in the memorandum as to the kinds of changes to primary legislation which are envisaged using the powers to "otherwise modify", or why the affirmative procedure is appropriate for an amendment to primary legislation but not where a provision of primary legislation is modified in some other way, such as by a non-textual modification. As we have said recently in relation to similar provisions in the Serious Crime Bill [HL] and the Infrastructure Bill [HL], a non-textual modification of primary legislation is capable of making changes which are no less significant than textual amendments. **In line with our conclusions on those Bills, we recommend that, unless the words "otherwise modify" can be fully explained to the House's satisfaction, those words should be removed; or, if they are retained, that the words "otherwise modify" should be inserted in clause 87(3) so that an order made under clause 87 in reliance on them will require the affirmative procedure.**

Schedule 3, paragraph 8 – Power to vary the bodies which regulate unfair contract terms

7. Part 2 of the Bill makes provision about unfair contract terms in contracts between traders and consumers. Clause 70 provides for Schedule 3 to have effect; and that Schedule makes provision about the bodies which are to regulate unfair contract terms and the powers of the regulators to take action against breaches of the provisions of Part 2. The powers conferred on a regulator by Schedule 3 include the power to consider complaints and apply for an injunction to prevent a person relying on an unfair term.

8. The bodies which are regulators for the purposes of Schedule 3 are listed in sub-paragraph (1) of paragraph 8 of the Schedule. Sub-paragraph (2) confers power on the Secretary of State by order to amend the list of regulators in sub-paragraph (1). Sub-paragraph (5) allows an order amending the list of regulators to include consequential amendments of Schedule 3. An order under paragraph 8(2) is subject to the negative procedure.

9. This is a Henry VIII power and as such we consider that there needs to be a convincing reason if exceptionally it is to be subject to a lower level of Parliamentary scrutiny than the affirmative procedure. The Department explains the choice of the negative procedure in paragraph 36 of the memorandum, where it states that the negative procedure is considered appropriate because the amendment of the list of regulators is an

administrative and procedural matter, not a substantive issue. We find this reasoning unconvincing. We do not accept that the question of which bodies are appropriate to regulate the provisions relating to unfair contract terms is only an administrative or a procedural matter. In our view, it is liable to raise important and substantive issues of policy. **Accordingly, we consider that the powers conferred by paragraph 8(2) and (5) of Schedule 3 should be subject to the affirmative procedure.**

Schedule 8, paragraph 6 – Payment of unclaimed damages to charity

10. Schedule 8 to the Bill makes amendments to the Competition Act 1998 to allow private actions to be brought in competition law before the Competition Appeal Tribunal. The amendments include provisions which allow collective proceedings to be brought combining a number of claims on behalf of the members of a particular class. These include opt-out proceedings which are brought on behalf of all class members other than those who opt out. Paragraph 6 of Schedule 8 inserts a new section 47C into the Competition Act 1998 which deals with damages in collective proceedings. Subsection (5) of section 47C provides that, where any damages in opt-out collective proceedings are not claimed by the represented persons within a certain period, the damages are to be paid to the charity for the time being prescribed by order made by the Lord Chancellor under section 194(8) of the Legal Services Act 2007. Section 194 is concerned with cases where a person's representation has been provided free of charge. It allows a court to order that a payment is made in respect of that representation to a prescribed charity.

11. Subsection (7) of new section 47C allows the Secretary of State by order to amend subsection (5). It is subject to the negative procedure despite being another Henry VIII power. The suggestion made in the memorandum is that this power will be used in the future, if appropriate, to prescribe other bodies which are to receive unclaimed damages from opt-out proceedings. We note however that the power as drafted goes much wider than this. It is not limited to substituting the body referred to in subsection (5) with other charities, but it would allow wider ranging changes to be made to the provisions dealing with unclaimed damages. We also note that nothing is said in the memorandum about the scale of the sums which the relevant charity is likely to receive under section 47C(5), but it seems to us that the amounts could potentially be very substantial. **Accordingly, we recommend that the House should ask the Minister to explain why the provision has been drafted in the way that it has been, and why it is not limited to a power to substitute the charity mentioned in section 47C(5) (currently, the Access for Justice foundation). We consider that the powers conferred by section 47C(7) should be subject to the affirmative procedure.**

Schedule 8, paragraph 12 – Power to make regulations governing approval of redress schemes

12. Paragraph 12 of Schedule 8 inserts a new section 49C into the Competition Act 1998 to allow the Competition and Markets Authority (CMA) to approve redress schemes which are proposed where a decision of the CMA finds there has been a competition law infringement of a kind regulated by Part 1 of the 1998 Act. Where such a scheme is approved by the CMA the

person offering compensation under the scheme is placed under a duty to comply with the terms of the scheme, and the CMA can bring enforcement proceeding for a failure to comply with that duty.

13. Subsection (5) of section 49C confers a power on the Secretary of State to make regulations relating to the approval by the CMA of redress schemes. The matters which may be dealt with in the regulations include the procedure governing an application for approval, provision limiting approval to those cases where the scheme has been devised in a particular way, where it is in a particular form or where it is to be administered in a particular way, and provision setting out the factors which the CMA may or must take into account in deciding whether to approve a redress scheme. The regulations are subject to the negative procedure.

14. The reasons for this delegation are given in paragraph 67 of the memorandum. The Department notes that the key aspects of the approval process are set out on the face of the Bill and that the matters to be dealt with in the regulations are the more detailed procedural requirements which are appropriate for secondary legislation. Similarly, the use of the negative procedure is explained on the basis that it provides an appropriate level of Parliamentary scrutiny for an instrument which sets out details about the procedural aspects of the approval process. We do not consider it apt to describe the powers conferred by section 49C(5) as being limited to procedural matters. In our view, the powers are much wider in that they allow the Secretary of State to make provision generally relating to the approval of redress schemes; and in particular to make provision which will allow the Secretary of State to specify the matters which must be taken into account when the CMA is deciding whether to approve a scheme, and which will allow the Secretary of State to restrict the circumstances in which approval may be given. **We believe that the reasons given in the memorandum do not adequately justify the use of the negative procedure. We recommend that the House seeks further explanation from the Minister before deciding whether the negative procedure is appropriate.**

CRIMINAL JUSTICE AND COURTS BILL

15. This Bill is to begin its Committee Stage on Monday 14 July. It makes provision about criminal justice, in particular in relation to sentencing, the release and recall of offenders and electronic monitoring (Part 1); it provides for secure colleges, and makes other provision about the treatment of young offenders (Part 2); it makes various changes to existing provision about courts and tribunals, including provision about the conduct of jurors (Part 3); and Part 4 is concerned with the granting of relief, and with funding and costs, in judicial review proceedings.

16. The Bill contains some fifty delegations of legislative power, and the Ministry of Justice has submitted a memorandum, explaining the powers and any associated provision for Parliamentary scrutiny.[2] There are three aspects of the Bill that we wish to draw to the attention of the House.

Part 2 - Rules about secure colleges

17. Clauses 29 and 30, and Schedules 5 and 6, introduce provision for secure colleges as places, along with existing young offender institutions and secure training centres, for the detention of young persons sentenced to detention for an offence or remanded to custody. Section 29(1) substitutes a new section 43 in the Prison Act 1952 ("the 1952 Act"), which applies sections 1 to 42A of, and Schedule A1 to, the Prison Act 1952 ("the prisons provisions") to secure colleges, subject to modifications made by negative procedure rules. Paragraph 3 of Schedule 5 to the Bill amends section 47 of the 1952 Act so that rules may be made for the regulation, management and inspection of secure colleges ("secure college rules") in the same way as for prisons, young offender institutions and secure training centres. Those rules too are subject to negative procedure.

18. Schedule 6 contains provision about the contracting out of the provision and running of secure colleges, in whole or in part: paragraph 1 enables the Secretary of State to enter into a contract with another person for that purpose, which may provide for the running of the secure college, or the part of it, to be sub-contracted. Paragraph 2 provides that a contracted-out secure college must be run in accordance with Schedule 6, the 1952 Act (as applied by new section 43) and secure college rules. Custodial duties are to be performed by "secure college custody officers" certified by the Secretary of State (see paragraph 16), and the duties themselves are provided for in paragraphs 7 to 11. In particular, paragraph 8 specifies four categories of duties (prevention of escape, prevention or detection of unlawful acts, ensuring good order and discipline, and attending to the well-being of detained persons), and paragraph 10 enables a secure college custody officer to use reasonable force where necessary in carrying out functions under paragraph 8 *if authorised to do so by secure college rules*.

19. Our attention has been drawn to the 14th Report of Session 2013-14[3] of the Joint Committee on Human Rights as it relates to this Bill, and in particular to paragraphs 1.58 to 1.68 containing the joint committee's consideration of

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2 http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and regulatory-reform-committee/bills-considered/

3 HL Paper 189

the possibility that secure college rules might authorise the use of force on children and young people for the purpose of ensuring their good order and discipline. We have also been influenced in our consideration of these powers by the observations of the Court of Appeal in *C v Secretary of State for Justice* [2009] QB 657 (referred to in paragraphs 1.60 to 1.64 of the joint committee's report), which held that rules relating to secure training centres were in breach of Article 3 of the European Convention on Human Rights in so far as they authorised the use of force for the purpose of maintaining good order and discipline. That decision was of course not available at the time when our predecessor committee considered the provisions in the Criminal Justice and Public Order Act 1994, that enabled the Secretary of State to make negative procedure rules under section 47 of the 1952 Act in respect of secure training centres.

20. Consistent with our longstanding view that, in the context of delegated powers, the question of compatibility with other obligations falls to be determined by reference to provision *exercising* the power rather than the provision *conferring* it, we do not go so far as to say that the rule-making powers conferred by virtue of Schedules 5 and 6 are inappropriate in this respect; but we consider that any rules that are made to authorise the use of force merit a high level of Parliamentary scrutiny. **We therefore recommend that, unless the Bill can be amended to preclude the authorisation (in rules made under section 47 of the Prison Act 1952 as they apply to secure colleges) of the use of force for the purpose of ensuring good order and discipline on the part of those detained, the rules should, to the extent that they authorise the use of force, require the affirmative procedure.**

Part 4 – Rules of court and tribunal procedure rules about costs

Information about applicants' resources – clauses 65, 66 and 68

21. Clause 66(2) provides that the High Court, the Upper Tribunal or the Court of Appeal must, when determining costs in judicial review proceedings (defined in subsection (4)), have regard to information specified in subsection (2). Subsection (3) also requires the court to consider whether to order costs to be paid by a person who is not a party to the proceedings but who is identified in such information as someone who is (or who is likely, or is able) to provide financial support for the purposes of the proceedings. The information in question is information about the financing of the proceedings that has been provided in accordance with section 31(3)(b) of the Senior Courts Act 1981 (in the case of a court) or section 16(3)(b) of the Tribunals, Courts and Enforcement Act 2007 (in the case of the Upper Tribunal).

22. Section 31(3) of the 1981 Act is amended by clause 65(1) to require an applicant to a court for leave to apply for judicial review to provide any information about the financing of the application as is specified in rules of court, which may include information of the kind mentioned in new subsection (3A) (inserted by clause 65(2)). That subsection specifies in particular information as to the financial resources likely to be available to an applicant; and, where the applicant is a body corporate, information about the ability of its members to provide financial support for the purposes of the application, should the body itself be unable to demonstrate that it is likely to have the necessary financial resources available for the purpose. In relation

to applications to the Upper Tribunal, equivalent amendments are made by clause 65(3) and (4) to section 16(3) of the 2007 Act to enable the financial and other information that must be provided to be specified in Tribunal Procedure Rules. Clause 66(2)(b) goes on to provide that rules of court or Tribunal Procedure Rules might also require the above information to be supplemented by the provision of further information (of a kind not described in the Bill).

23. Clause 68 seeks to replace the practice developed by the courts (by way of "protective costs orders") of extinguishing or limiting a party's liability for costs, in the event that the claim is lost by that party. It restricts the circumstances in which such an order, referred to in clauses 68 to 70 as a "costs capping order", may be made. Subsection (4) precludes the making of a costs capping order unless an application is made in accordance with rules of court, which may (under subsection (5)) require that the application should contain information specified in the rules, including financial information of the kind described in our previous paragraph.

24. Rules of court and Tribunal Procedure Rules are made (respectively) under section 1 of the Civil Procedure Act 1997 and section 22 of the Tribunals, Courts and Enforcement Act 2007. They are made, not by a minister, but by a Rules Committee, though they must be allowed by the Lord Chancellor and are then subject to Parliamentary scrutiny by way of the negative procedure. However, that is not to say that the relevant Rules Committee has an entirely free hand, in the sense that it is immune from ministerial influence. Section 3A(1) of the 1997 Act enables the Lord Chancellor to give notice to the Rules Committee that "he thinks it expedient for the rules to include provision that would achieve a purpose specified in the notice", and subsection (2) requires the committee to make such rules as it considers necessary to achieve that purpose. Paragraph 29 of Schedule 5 to the 2007 Act makes comparable provision in relation to Tribunal Procedure Rules.

25. The provision in clauses 65 to 68 about applicants' liabilities in respect of costs is in our view likely to discourage some persons or bodies from seeking to bring judicial review proceedings, irrespective of the merits of their case, but it is a question of policy for the House whether the new requirement to provide financial information, and the new obligations imposed on a court or tribunal to have regard to it, should be enacted as proposed. However, we consider that the specific obligations as to the particular nature of the financial information to be provided, and as to the persons about whom it must be provided, are a key element of the new requirements, which could involve intrusive demands for the disclosure of personal data. They ought therefore to be subject to a high level of Parliamentary scrutiny, in view of their central place in what are novel statutory arrangements for the curtailment of judicial discretion in matters of costs, and given their potentially chilling effect on those considering an application for judicial review. In the light of those considerations, we do not consider that requirements of this significance are suitable for inclusion in negative procedure rules of court, and we do not agree with the assertion in paragraph 103 of the memorandum that provision of this nature is merely procedural in character.

26. **We accordingly find it inappropriate that the nature of the information to be required under section 31(3)(b) of the Senior Courts Act 1981 and section 16(3)(b) of the Tribunals, Courts and**

Enforcement Act 2007, and under clauses 66(2)(b) and 68(4), is to be specified in rules of court subject only to the negative procedure. We consider that, in so far as such information cannot be specified in the Bill itself, it should be specified in a statutory instrument subject to the affirmative procedure.

Interveners' costs – clause 67

27. Clause 67 is concerned with a person, other than a "relevant party" (defined in subsection (8)), who is granted permission by the High Court or the Court of Appeal to file evidence or make representations in the proceedings ("the intervener"), and subsections (3) and (5) provide that the intervener may only be awarded costs where, and must be ordered to pay other parties' costs unless, there are exceptional circumstances. When considering whether there are "exceptional circumstances" for either purpose, the court is required by subsection (6) to have regard to criteria specified in rules of court.

28. Although the rules may only specify criteria that must be considered, and there is no suggestion on the face of subsection (6) that the criteria are to be exhaustive, they are clearly intended to be highly influential when the issue of exceptional circumstances is being considered. We do not understand why it was not thought appropriate to set out the criteria on the face of the Bill, with a power (if thought necessary) to amend the criteria by affirmative regulations, in the same way as the criteria in respect of costs capping orders are provided for in clause 68(8) and (9) and clause 69(1) and (3). In our view, our observations above about the significance of the provision delegated to rules, in terms of the curtailment of judicial discretion and the potentially chilling effect on those who might participate in judicial review proceedings, apply with equal force in the context of the criteria to be specified for the purposes of clause 67; and we again find the description in paragraph 103 of the memorandum of these criteria as "procedural matters" entirely unpersuasive.

29. **We therefore consider that the delegation in clause 67(6) to rules of court is inappropriate, and recommend that the clause be amended to specify the criteria on the face of the Bill. Any power to amend the criteria should be exercisable by affirmative regulations.**

Clause 70 – Regulations to disapply costs capping provisions

30. Clause 70 enables the Lord Chancellor, by negative procedure regulations, to exclude from the costs capping provisions of clauses 68 and 69 judicial review proceedings which, in his opinion, "have as their subject an issue relating entirely or partly to the environment". Such provision may be made either generally or in relation to particular proceedings (see subsection (2)). As is explained in paragraph 110 of the memorandum, the purpose of the power is to allow for a flexible approach to exemptions, so that, for example, the requirements of the Aarhus Convention may be given effect. We have seen a number of examples in Bills over recent years where a power of this kind is conferred in the context of a need to exclude or modify the application of a statutory provision so as to secure UK compliance with international obligations. When considering the question of appropriateness, we have generally taken the view that a power, rather than a duty, is more likely to afford the necessary flexibility to secure consistency with particular

obligations; and that the issue of compliance or non-compliance with the international obligation falls to be considered by reference to the provision *exercising* the power, rather than the provision *conferring* it. So we do not regard this delegation as inappropriate.

31. The power conferred by clause 70 is in the nature of a "relieving" power (because it would be exercised so as to exclude proceedings from the restrictions imposed by clauses 68 and 69) which in many instances would lead us to regard the negative procedure as appropriate. But we do not take that view in the context of the costs capping provisions, whose significance in terms of restrictions on access to justice we have alluded to above. When the House comes to consider regulations made in exercise of the power, the question may arise whether their provisions adequately give effect to the UK's international obligations (so that there may be an issue about what provision it is thought the regulations *should* contain, in addition to the provisions already included in them). In view of that, we considered whether some form of enhanced affirmative procedure might be appropriate, in order to give the House the opportunity to recommend that additional provision be included before the regulations are made. **We have reached the clear conclusion that the negative procedure proposed by the Government is inappropriate for regulations under clause 70, and we recommend instead that at least the affirmative procedure should be required.**

DIVORCE (FINANCIAL PROVISION) BILL [HL]

32. This Private Member's Bill had its Second Reading on 27 June. It is concerned with the financial provision to be made for the parties to a marriage or civil partnership following their divorce or the dissolution of the civil partnership, and in particular with the matters that a court is to take into account when making an order about such financial provision.

33. The Bill confers only one delegated power, in clause 3(3), enabling the Lord Chancellor to make provision by negative procedure regulations about the requirements of full disclosure of assets for the purposes of subsection (1)(d) of that clause. We do not find either the delegation or the negative procedure to be inappropriate, and there is accordingly nothing in the Bill which we wish to draw to the attention of the House.

MEDICAL INNOVATION BILL [HL]

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

PARLIAMENTARY PRIVILEGE (DEFAMATION) BILL [HL]

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

SERIOUS CRIME BILL [HL]: GOVERNMENT RESPONSE: CLAUSE 63

36. We considered this Bill in our 2nd Report (HL Paper 15). The Government have now responded by way of a letter from Lord Taylor of Holbeach CBE, Parliamentary Under Secretary of State for Criminal Information, printed at Appendix 1.

ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL ASSISTANCE) BILL [HL]: GOVERNMENT RESPONSE

37. We considered this Bill in our 2nd Report (HL Paper 15). The Government have now responded by way of a letter from Anna Soubry MP, Parliamentary Under Secretary of State and Minister for Defence Personnel, Welfare and Veterans, printed at Appendix 2.

INFRASTRUCTURE BILL [HL]: GOVERNMENT RESPONSE

38. We considered this Bill in our 2nd Report (HL Paper 15). The Government have now responded by way of a letter from Baroness Kramer, Minister of State for Transport, printed at Appendix 3.

APPENDIX 1: SERIOUS CRIME BILL [HL]: GOVERNMENT RESPONSE: CLAUSE 67

I am grateful to the Delegated Powers and Regulatory Reform Committee for their recent report (Second Report of session 2014/15) on the Serious Crime Bill.

The Committee made two recommendations. We are giving careful consideration to the first of these, which was in respect of the power, in clause 10, to make provision for minimum terms for default sentences for failure to pay a confiscation order, and I will respond to the Committee in advance of Report stage.

The second recommendation related to the power, in clause 67 of the Bill, to modify Acts. The Committee pointed to the fact that the regulation-making power in section 67(2) and (3) includes a power to amend, repeal, revoke or otherwise modify any provision made by or under primary legislation. The Committee further pointed out that any regulations amending, repealing or revoking any provision of primary legislation was subject to the affirmative procedure, but that the negative procedure would apply to any regulations otherwise modifying primary legislation. We accept the Committee's argument that a non-textual modification of primary legislation is capable of making changes which are no less significant than textual amendments; accordingly, I have today tabled an amendment for Committee stage to amend clause 67(5) so as to provide that any regulations otherwise modifying primary legislation are also subject to the affirmative procedure.

Lord Taylor of Holbeach CBE

Parliamentary Under Secretary of State for Criminal Information

2 July 2014

APPENDIX 2: ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL ASSISTANCE) BILL [HL]: GOVERNMENT RESPONSE

I am grateful for your committee's consideration of the Armed Forces (Service Complaints and Financial Assistance) Bill and for the recommendation contained in the report published on 27 June. I am responding as the lead Minister for the Bill.

The report contained one recommendation in relation to the Bill, that the power at 340B(5)(c) of the Bill was inappropriate given its potentially wide scope to limit the right to bring a service complaint.

The power at 340B(5)(c) is currently intended to cover two 'other' grounds – where the same complaint has already been dealt with (a repeat complaint) and a complaint that is completely spurious or in which there is no 'wrong' to be considered. These have been drawn from current experience of dealing with complaints. In both cases it can be difficult for all parties to be clear on whether a valid complaint has been made and, if accepted unnecessarily, it would add volume and complexity to the system which would lead to delay. I attach for your information an initial draft of the regulations to be made under the Bill so that you can see what we currently intend this power to cover.

We therefore intend that the power under 340B(5)(c) should be very limited in what it covers. However, I understand the concerns about the potential scope of the power raised by your committee and I have asked my officials to explore whether anything else might be done to limit the scope of the power in a suitable way.

Anna Soubry MP

Parliamentary Under Secretary of State and Minister for Defence Personnel, Welfare and Veterans

6 July 2014

APPENDIX 3: INFRASTRUCTURE BILL [HL]: GOVERNMENT RESPONSE

Thank you for your report on the measures in the Infrastructure Bill. I am grateful to the Committee for the speed with which it has considered the Bill and completed its report.

In recognition of the Committee's comments on clauses 13, 14 and 28 of the Bill, we have laid Government amendments which adjust these provisions. These amendments are attached.

The amendments to clauses 13, 14 and 28 are in similar terms, and address the Committee's comments by specifying that the "power to modify" is a power to modify the application of any enactment, and by explicitly limiting that power in respect of primary legislation to Acts passed before the end of the current Session of Parliament.

The amendment to clause 29, which supplement the three clauses mentioned above, provides that in each case the exercise of a power to modify the application of primary legislation attracts the affirmative resolution procedure.

I can further confirm that we share the Committee's understanding that these powers could not be used so as to make changes to the Infrastructure Act itself. It is not necessary to lay amendments for these purposes, as the drafting already reflects this position.

As you are aware, we intend to add further provisions to the Bill by way of Government amendment, and we will be sending supplementary memoranda to the Committee at the appropriate times. I recognise that it may not always be possible for the Committee to report on such Government amendments before the amendments are first considered in detail by the House, and I will ensure that the attention of the House is drawn to this where appropriate, in line with the Committee's guidance.

Baroness Kramer

Minister of State

7 July 2014

APPENDIX 4: MEMBERS AND DECLARATIONS OF INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from The Stationery Office.

Attendance:

The meeting on the 9 July 2014 was attended by Baroness Andrews, Lord Bourne of Aberystwyth, Baroness Drake, Baroness Farrington of Ribbleton, Baroness Fookes, Countess of Mar, Lord Marks of Henley-on-Thames, Viscount Ullswater and Baroness Thomas of Winchester.