HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

23rd Report of Session 2015–16

# Access to Medical Treatments (Innovation) Bill: Government Response

# Bank of England and Financial Services Bill [HL]: Government Response

# Immigration Bill: Government Response

# Riot Compensation Bill: Government Response

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HL Paper 111

## *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 are:

Baroness Drake
Baroness Fookes *(Chairman)*
Lord Flight
Baroness Gould of Potternewton
Lord Jones
Lord Lisvane
Countess of Mar
Lord Moynihan
Lord Thomas of Gresford
Lord Tyler

## *Registered Interests*

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## *Publications*

The Committee's reports are published by the Stationery Office by Order of the House in hard copy and on the internet at www.parliament.uk/hldprrcpublications.

## *General Information*

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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 hldelegatedpowers@parliament.uk.

## *Historical Note*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and other acts specified in the Committee's terms of reference.

# Twenty Third Report

## ACCESS TO MEDICAL TREATMENTS (INNOVATION) BILL: GOVERNMENT RESPONSE

1. We considered this Bill in our 22nd Report of this Session.[1] The Government have now responded by way of a letter from Lord Prior of Brampton, Parliamentary Under Secretary of State for NHS Productivity, at the Department of Health, published at Appendix 1.

## BANK OF ENGLAND AND FINANCIAL SERVICES BILL [HL]: GOVERNMENT RESPONSE

2. We considered this Bill in our 11th, 12th and 16th Reports of this Session.[2] The Government have now responded by way of a letter from Lord Bridges of Headley, Parliamentary Secretary for the Cabinet Office, published at Appendix 2.

## IMMIGRATION BILL: GOVERNMENT RESPONSE

3. We considered this Bill in our 17th and 18th Reports of this Session.[3] The Government provided a response, published in our 19th Report.[4] The Government have now provided a further response, by way of a letter from Rt Hon. Lord Bates, Minister of State at the Home Office, published at Appendix 3.

## RIOT COMPENSATION BILL: GOVERNMENT RESPONSE

4. We considered this Bill in our 22nd Report of this Session.[1] The Government have now responded by way of a letter from Rt Hon. Lord Bates, Minister of State at the Home Office, published at Appendix 4.

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1 22nd Report, Session 2015–16, HL Paper 102.
2 11th Report, Session 2015–16, HL Paper 50; 12th Report, Session 15–16, HL Paper 52 and 16th Report, Session 15-16, HL Paper 70.
3 17th Report, Session 2015–16, HL Paper 73 and 18th Report, Session 2015–16, HL Paper 83.
4 19th Report, Session 2015–16, HL Paper 85

## APPENDIX 1: ACCESS TO MEDICAL TREATMENTS (INNOVATION) BILL: GOVERNMENT RESPONSE

### Letter from Lord Prior of Brampton, Parliamentary Under Secretary of State for NHS Productivity, at the Department of Health, to Baroness Fookes, Chairman of the Delegated Powers and Regulatory Reform Committee

I am grateful for the work of the Committee in examining and reporting on the Access to Medical Treatments (Innovation) Bill in its 22nd Report of Session 2015–16 published on 25 February (HL102).

The Committee found the explanations on page 3 of the Delegated Powers and Regulatory Reform Committee memorandum1 to be persuasive as to the reasons for delegating these powers to subordinate legislation, and as to the choice of the negative procedure. However, the Committee noted that clause 2 of the Bill appears to envisage no such provision, either in the Bill itself or in the regulations, for the enforcement of conditions imposed by virtue of subsection (4)(b). I thank the noble Lord, Lord Hunt of Kings Heath, for drawing this matter to the attention of the House at Second Reading.

Regulations made under clause 2, conferring functions on the Health and Social Care Information Centre (the HSCIC) in connection with the establishment, maintenance and operation of a database of innovative medical treatments, may, by virtue of subsection (3)(b), make provision relating to access to information recorded in the database. Subsection (4)(b) provides that this may include provision requiring or authorising the HSCIC to impose conditions to be complied with by any person to whom information from the database is disclosed.

It is correct that the Bill does not establish a legal mechanism for the HSCIC to enforce such conditions. It was felt that it would be more appropriate for the HSCIC to take non-legislative steps if there were concerns about compliance with any conditions. For example, the HSCIC could consider refusing to disclose further information to any individual who has on a previous occasion breached a condition subject to which information was disclosed to him or her; and, in the case of an NHS employee, there may be ways in which a breach could be brought to the attention of his or her employer. In circumstances where the regulations require the HSCIC to disclose information from the database it may also be possible for the regulations themselves to make provision aimed at the consequences of a breach.

In terms of safeguarding patient information, any person to whom information is disclosed will be bound by the duty of confidentiality and where recipients are doctors (which we expect they will mainly be) they will also be bound by professional obligations, as well as GMC guidance, as part of maintaining their licence.

**2 March 2016**

## APPENDIX 2: BANK OF ENGLAND AND FINANCIAL SERVICES BILL [HL]: GOVERNMENT RESPONSE

### Letter from Lord Bridges of Headley, Parliamentary Secretary for the Cabinet Office, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

I am grateful to the Delegated Powers and Regulatory Reform Committee for their reports on Bill. I would like to respond to the Committee's recommendations raised in its 11th, 12th and 16th reports of Session 2015–16. The Committee made four recommendations on the Bill - the Government has accepted all of these. I explain below how each recommendation has been implemented.

*11th Report*

In the Committee's 11th Report, attention was drawn to two delegated powers conferred by the Bill. The first concerned the power for the Treasury to make regulations in connection with FCA/PRA rules in new section 59AB of the Financial Services and Markets Act 2000 ("FSMA") (inserted by clause 21 (previously Clause 19)). The Committee recommended that any regulations under new section 59AB(2) which modify or exclude any provision of an Act should require the affirmative procedure.

In response, the Government tabled an amendment at Lords Report to make the power in new section 59AB subject to the affirmative resolution procedure not the negative resolution procedure if those regulations modify, exclude or apply with modifications any provision in primary legislation (see clause 21 (3)).

The second power which was questioned by the Committee concerned the Treasury's power to make regulations authorising new issuers of banknotes in new section 214A of the Banking Act 2009 (inserted by clause 34 (previously Clause 29)). The Committee was concerned that the regulations might give the Treasury power to designate the date on which the new authorisation was to take effect, without specifying how that designation was to be published. The Committee recommended that, in view of the significance of the provision that may be made under new section 214A, an equivalent requirement as to publicity to that in the Bank of Ireland (UK) Act 2012 should apply in this case too.

In response, the Government tabled an amendment at Lords Report to new section 214A so that whenever HMT makes regulations under section 214A which do not specify the date from which the new issuer is authorised to issue banknotes, those regulations must provide for that date to be published in advance in the London, Edinburgh and Belfast Gazette (see new section 214A(4)(b) and (5)).

*12th Report*

The Committee's 12th report criticised the power given to the Treasury in new section 284A of FSMA (inserted by clause 28 of the Bill (previously clause 26). Attention was drawn to the potential for regulations under subsection (6)(c) of that section (which permit the Treasury to authorise the FCA or the PRA to require the Council of Lloyd's to exercise functions on its behalf) to interfere significantly with private rights, and the suspension (by virtue of subsection (10) of the same section) of the process by which the House may consider such interference with a view to ensuring that those rights are safeguarded. The Committee recommended that the new clause should be amended so that the power in subsection (6)(c) may not be exercised without the consent of the Council of Lloyd's.

In response, the Government tabled an amendment at Lords Report to make the power in new section 284A(6)(c) exercisable only with the consent of the Council of Lloyd's (see section 284A(7)).

*16th Report*

In the Committee's 16th report, the Committee expressed concern in relation to the power in new section 137FBA(3) of FSMA (inserted by clause 30 (previously clause 27) of the Bill) for the Treasury to provide that specified classes of individuals are "exempt persons", relieving firms from the requirement to ensure that they have received appropriate advice before transferring any right to annuity payments they may hold. The Committee recommended that regulations made under this provision should require the affirmative procedure.

This recommendation was implemented by a Government amendment tabled at Lords Third Reading (see clause 30(5)). These amendments give effect to the power for the Treasury to exempt certain people from the requirement to have received appropriate advice before dealing with rights in relation to annuity payments should be subject to the affirmative resolution procedure.

**2 March 2016**

## APPENDIX 3: IMMIGRATION BILL: GOVERNMENT RESPONSE

### Letter from Rt Hon. Lord Bates, Minister of State at the Home Office, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

Further to my letter to you of 12 January 2016, I am now writing to convey our response to your Committee's 17th and 18th Reports of Session 2015–16 on the Immigration Bill. We are grateful for the Committee's scrutiny.

Paragraphs 17 to 19 of the 17th Report addressed the powers in clauses 16(2) and (3) and 43(2) and (3) (now clauses 40 and 68 respectively) to amend the Bill itself when making provision similar to the Bill in Wales, Scotland or Northern Ireland, including a sub-delegated power to make regulations in clause 43(3)(b).

We have accordingly tabled an amendment which will remove the power in clause 16(3)(a) to amend the Bill itself.

In relation to clause 43(3) we have responded to your concerns by amending the provision such that it no longer contains a sub-delegated power to make regulations. But, as we set out in my letter of 12 January, we consider it necessary to provide a power to amend the Bill itself in order to allow the necessary flexibility in extending these provisions to Wales, Scotland and Northern Ireland. In adopting a different approach from that in relation to clause 16(3)(a), we are mindful that the substantive provisions in clauses 13 to 15 (now, 37 to 39) are textual amendments of other Acts. If we did need to amend a provision in those clauses, e.g. section 33A of the Immigration Act 2014, we could amend this directly, rather than amending the Bill. But this approach is not available in the case of clause 43 as the substantive provisions in clauses 39 to 42 are free-standing.

Paragraphs 22 and 24 of the 17th Report recommended that the affirmative procedure should apply for regulations made under new section 95A of the Immigration and Asylum Act 1999 and under new paragraphs 1OA and 1OB of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 respectively.

We accept this recommendation, and as a consequence will also apply the affirmative procedure to the powers to provide temporary support under new paragraphs 1OA and 1OB, inserted by Government amendments at Lords Committee. We have accordingly tabled amendments to this effect.

Paragraphs 25 to 27 of the 17th Report identified need for an explanation of the amendments in paragraph 13 of Schedule 9 to the Bill (now paragraph 14 of Schedule 11) to the existing power in paragraph 15 of Schedule 3 to the 2002 Act. I hope that the explanation in paragraphs 6 to 9 of my letter of 12 January was of assistance in this regard, including in relation to the arrangements for Parliamentary control of the power to provide by regulations for the support of a further class of persons who are excluded from other forms of support. We have, however, tabled an amendment to meet the Committee's concern that it should be clear that this sub-delegated power is to be exercised only by the Secretary of State.

Paragraph 32 of the 17th Report recommended that the affirmative procedure should apply to the power to prescribe a maximum penalty conferred by new paragraph 28(6) of Schedule 2 to the Immigration Act 1971. We have accordingly tabled amendments to this effect.

Paragraph 9 of the 18th Report recommended that regulations made under new section 114B(4)(e) of PACE should require the affirmative procedure. We have accordingly tabled amendments to this effect.

In paragraph 13 of the 18th Report, the Committee concluded that the new code of practice for enforcing authorities in Part 1 of the Bill should be subject to Parliamentary control. We have accordingly tabled amendments to provide that the code is to be brought into force by a statutory instrument, subject to the negative procedure.

In paragraph 18 of the 18th Report, the Committee recommended that the provision removing Parliamentary control over rules made by the new Gangmasters and Labour Abuse Authority be omitted. We have accordingly tabled an amendment to provide that such rules are subject to the negative procedure, and are subject the approval of the Secretary of State.

**1 March 2016**

## APPENDIX 4: RIOT COMPENSATION BILL: GOVERNMENT RESPONSE

### Letter Letter from Rt Hon. Lord Bates, Minister of State at the Home Office, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

The Government and sponsors of the Bill are grateful for the Delegated Powers and Regulatory Reform Committee's 22nd Report of Session 2015–16 in relation to the Riot Compensation Bill. The Report forms a valuable part of the scrutiny of the Bill. The Government wishes to respond to the substantive points raised by the Committee before the Bill is considered at Lords Committee stage, in order to assist the House with its consideration of the Bill.

The Committee made five recommendations on the Bill relating to: regulations amending the categories of property covered by the Bill; regulations governing the making of claims; guidance on assessing claims; regulations changing the amount of the compensation cap; and the right of appeal against a decision on a riot compensation claim.

I shall respond to each of the points in turn but before doing so I would like to raise a more general point on our approach to the delegated powers within the Bill. When drafting the Bill and the accompanying Delegated Powers Memorandum we adopted the general principle that where regulations under the Bill restricted entitlements for the public, they would be subject to the affirmative parliamentary procedure. Conversely, if regulations conferred a benefit on the public then the negative procedure would apply. We believe that this is a fair approach, and one which ensures the right level of scrutiny and appropriate use of that Parliamentary time.

*Clause 2 - Property in respect of which claims may be made*

Clause 2 sets out that claims may be made in relation to buildings, certain motor vehicles and property as defined in clause 2(3). Clause 2(3) may be amended by regulations. In line with the principle set out above, clause 11(2)(a) provides that regulations which restrict, or are capable of restricting, the categories of property in respect of which a claim may be made are subject to the affirmative procedure. Regulations which make the compensation scheme more generous (i.e. do not restrict or have the capacity to restrict the categories of property covered by the Bill) are subject to the negative procedure.

We are grateful to the Committee for their observation that the negative procedure might potentially be used to limit the 'circumstances' in which compensation may be claimed for a particular category of property, citing the following example:

> *' … subsection (3) might be amended so that a claim for compensation could only be made for property which is stolen from the curtilage of a building, if reasonable steps had been taken by the owner to secure the property.'*

We understand the Committee's argument, and I am grateful to the Committee for giving me the opportunity to set out the Government's view on this point. We respectfully disagree with the Committee's interpretation of this provision. Our firm view is that any attempts to restrict the type of property covered by Bill will be subject to the affirmative procedure, as set out in clause 11 (2)(a). This provision has a broad meaning, particularly given the reference to regulations which "*are capable* of restricting", and will include changing the 'circumstances' in which

compensation may be claimed (as this essentially has the effect of limiting the categories of property covered by the Bill). The example given by the Committee (quoted above) would therefore be subject to the affirmative procedure and subject to proper Parliamentary scrutiny.

I would therefore like to reassure the Committee that if the Government were to bring forward any regulations under clause 2(4) which were capable of restricting the property in respect of which claims could be made, the affirmative procedure would apply.

In light of this further explanation of the delegated power and the reassurance about the example cited by the Committee, we do not believe an amendment to the Bill is required.

*Clause 3 – Regulations governing the making of claims*

Clause 3 requires the Secretary of State to make regulations about the procedure for making a claim for compensation. Clause 3(2) sets out that such regulations may include provision about the appropriate person to make a claim (in particular where more than one person has an interest in property); and the circumstances in which a single claim must cover a number of different items or types of property.

The Committee suggests that regulations which make provision for either of the matters set out in clause 3(2) should be subject to the affirmative procedure. The Committee underlined the importance of this clause given that each claim is subject to the compensation cap.

However, we respectfully contend that it is right that regulations under clause 3 are subject to the negative procedure. Any such regulations deal with procedural and technical matters only and cannot undermine the essential right to compensation that is enshrined in clause 1 of the Bill.

I would like to reassure the Committee that the intention behind this provision is to ensure that the compensation regime is generous where multiple claims/claimants are involved, as the Bill seeks to ensure an effective system of compensation for claimants. The Explanatory Notes (pages 7 and 8) provide further examples of this:

> *'Scenario (a): during the course of a riot the infrastructure of a block of 12 flats has been damaged and various contents in a number of flats have been damaged and stolen. All of the flats are leasehold, the freeholder of the block of flats is legally responsible for the external structure of the building but failed to take out insurance.*
>
> *The Government intends through regulations to clarify that the freeholder may make individual claims for the external damage to each of the 12 flats (with a £1m cap for each claim). The leaseholders may also submit separate claims for any contents that were not covered by insurance.*
>
> *Scenario (b): a riot breaks out on the site of* a *controversial property development and machinery leased by the building company is damaged.*
>
> *Ownership will depend on the lease agreement and who has responsibility for repairing the cost of the damage. In the event that the lessee is responsible for the damage and does not have insurance then they could submit a claim under the new provisions. If the owner of the equipment is responsible and has*

*insurance cover then the expectation is that the insurance company will submit a subrogated claim to the local policing body.'*

As indicated at scenario (b) above, there are also complex technical issues around multiple claims, for example dealing with partial ownership interests, franchising and businesses with different commercial interests in the same property. I believe that the negative procedure is appropriate for such technical regulations.

We envisage the circumstances in which claims will be consolidated will be very limited but can highlight two scenarios where this might arise:

(a) In cases where there are linked properties where rebuilding is required it is often helpful *to* link up processing and decision-making. For example in relation to claims arising from August 2011on the London Road, Croydon the processing of these claims became much better co-ordinated when a joint approach was taken between insurers, the local authority and the Metropolitan Police Service *to* look at rebuilding solutions that covered all the properties. However this would not be done in such a way to deprive claimants i.e. each building owner and/or tenant would be entitled to submit their own claim of up to £1m.

(b) In order to reduce the scope of fraud we may state in regulations that only freeholders, leaseholders and tenants will be able to make a claim. For example if a house affected by a riot has four tenants they may each make a claim but if one of those tenants had a partner (i.e. a non-tenant) who left a laptop there which was stolen they may be required to make a claim through their partner.

I would also like to provide the Committee with a further reassurance that the Government is committed to bringing forward regulations in the spirit of the Bill and the Explanatory Notes to enable claims to be brought in more complex situations by multiple claimants (so long as the full value of the same property is not paid out more than once).

Given the underlying right to compensation at clause 1 (which these regulations cannot undermine), the technical nature of the provisions, the fact that they help support claims being made, and the reassurance I have provided about the nature of regulations the Government intends to bring forward, I believe that the Bill is appropriate as it stands.

*Clause 7 - Guidance on assessing the validity of claims*

I note the Committee has recommended that the guidance referenced in Clause 7(3) be subject to Parliamentary scrutiny or laid before Parliament.

We are committed to ensuring that guidance for decision-makers is clear and detailed. This will also satisfy one of the recommendations of the independent review led by Neil Kinghan, who said that a manual to inform the process should be published.

We believe it is entirely reasonable for such guidance not to be subject to Parliamentary scrutiny or laid before Parliament, as it is intended to simply cover a range of practical issues. For example, it is likely to include template forms and letters and also recommended timescales for periodically writing to claimants when they do not maintain contact. Such guidance is intended to set out practical steps that would have been of assistance when dealing with claims following the 2011 riots. Further, whilst decision-makers will be required to have regard to the

guidance when dealing with claims, the guidance will not be binding to the extent that this requirement falls short of a duty to follow the guidance. This approach is consistent with other legislative provisions providing for statutory guidance, for example section 5C of the Female Genital Mutilation Act 2003 (as inserted by section 75 of the Serious Crime Act 2015) and section 53E of the Police Act 1996 (inserted by section 125 of the Anti-social Behaviour, Crime and Policing Act 2014).

In any event, the substance of the Committee's concern may be met without the need to amend the Bill. I am happy to make a commitment to the Committee that we will publish the guidance in draft before it is finalised (which is likely to be available alongside the draft regulations). I will ensure that a copy of the draft guidance is placed in the House library.

*Clause 8(9) - Changing the amount of the compensation cap*

I am grateful to the Committee for querying how the regulation making power under clause 11 (4)(b) is intended to be used and whether it has been included to allow the compensation to cap to be set at different levels for different areas (through regulations under clause 8(9)). The Committee was concerned about the possibility of regulations setting different regional caps, without being subject to the affirmative procedure.

Whilst we respectfully note the Committee's concern we are firmly of the view that the Bill does not allow for different regional caps to be set. The Bill clearly sets out at clause 8(1) that there will be a single compensation cap (not 'caps'). Further, the Bill quite properly sets out at clause 11 (2)(b) that regulations which reduce the amount of the compensation cap will be subject to the affirmative procedure, in order to provide the appropriate level of scrutiny. The intention to set a single national cap is clear here also, given the reference to a single "amount" not 'amounts.'

In addition, the Government has made clear in the official record that it is not our intention to allow for regional caps. Instead, we have set a cap based in particular on experience in one of the most costly regions in the country (London) which also provides effective access to compensation in less costly areas. At Commons Report, Mike Wood MP, the Bill sponsor, in resisting a proposed amendment to the Bill to allow for regional caps to be set, said (5 Feb 2016 : Column 1216):

> *'On the proposal to introduce regional variations, I can see the initial attraction, but the reality is that the £1 million cap is primarily determined at the London level. Regional variations would not mean that the cap was higher than the £1 million in London, but that there was* a *lower cap elsewhere in the country. The proposal is not necessary, and it would add additional complexity to the scheme, so I would want to avoid it.'*

Minister James Brokenshire MP added (5 Feb 2016: Column 1220):

> *In Committee and again today, the right hon. Gentleman raised the issue of regional variations that might affect the cap. The £1 million cap* was *determined using claims information from the London riots in 2011. One could* say, *therefore, that the analysis was conducted on claims from one of the most destructive riots in a generation in one of the most costly regions in which to live. It was a very serious example and the right benchmark. On that basis, the cap would not only adequately cover Londoners in the event of* a *future riot, but more than adequately cover those in other regions. That is the approach we*

> *have taken. I reiterate that according to our analysis and that of the Association of British Insurers, had the £1 million cap been in place for the August 2011 riots, then 99% of claims would still have been paid in full.*

I can further reassure the Committee that this remains the Government's position. The Government is committed not to bring forward regulations to provide for regional caps both because we favour a national cap in principle and because the Bill does not provide the Government with a legal basis for regional caps in any event (something that is recognised by others, given that amendments to the Bill were unsuccessfully tabled to enable this).

Clause 11 (4) is a standard provision commonly included in general regulation-making powers to provide necessary flexibility. This would allow the regulations to be amended in light of the experience of any future riot. On a regional level this might, for example, include the ability to set regional delegated decision-making limits by which contracted loss adjusters can sign off claims. This would allow larger forces to deal with higher volumes of claims more expeditiously.

In light of this further explanation of the delegated power, the fact that it does not allow for regional caps, and the reassurance about how the Government intends to use the regulation-making power, we do not believe an amendment to the Bill is required.

*Clause 9 - Appeals against decisions on compensation claims*

I am also grateful to the Committee for raising their concerns about the power to make provision for an appeals procedure under Clause 9, and specifically about the lack of detailed information in the Bill:

> *'about the grounds on which an appeal may be made, the body or kind of body which* is *to determine an appeal, or about the powers which the appeal body* is *to have in determining appeals.'*

I would agree with the Committee that it is important for the public to understand the grounds for appeal although the Government is of the view that this does not necessarily need to be set out on the face of the Bill.

It might be helpful to provide some background on current entitlement. The Riot (Damages) Act 1886 only provides for a right to take a case to the court, although in practice all forces handling claims in 2011 provided an internal right of review. I am grateful to Lord Pannick at Second Reading for questioning whether it was still our intention to allow cases to be taken directly to court rather than the more usual and limited route of administrative decisions being subject to challenge through judicial review.

The experience of handling compensation claims from August 2011 has shown that taking a claim to court is beyond the financial reach of most people who made a riot compensation claim (bearing in mind that many people only made a claim because they could not afford insurance).

Our intention, although this is still subject to ongoing work, is to allow for an independent administrative right of appeal, preferably to the First Tier Tribunal. This would better address the issue of accessibility to an independent right of review in future.

We also intend for the right of appeal to be expansive, covering any adverse decision. For example, this would include a refusal to afford extra time to submit

a claim through to a disagreement over offering a reduced settlement from the amount claimed or a refusal to pay outright. The only circumstances where we envisage an appeal not being permitted is if it is evident that it is frivolous or vexatious in nature.

We also anticipate adding further technical detail in the regulations around appeals including time limits and the ability for a decision-maker to make an interim payment on the aspects of the claim that are not in dispute.

We believe it is appropriate to set out the detail of these matters in regulations. This is in line with the approach taken in other legislation. For example, section 12(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, sets out the power to make regulations (using the negative procedure) in relation to appeals against decisions on whether to grant or withdraw civil legal aid without further detail on the face of the Bill.

Lastly, you will also note that clause 9 sets out that the Secretary of State must make such regulations (i.e. it is not merely a discretionary power).

I hope this explanation provides reassurance on the Government's intentions around riot compensation appeals.

I welcome the Committee's scrutiny of the Bill and for the considered points they have raised. The Committee's report has been immensely helpful in enabling me to make clear what the Government's approach to regulations under this Bill would be.

I have sought to provide reassurance both that the regulation making powers in the Bill are appropriate and that the Government is committed to using the powers in a way that supports the purpose and spirit of the legislation. The Bill would provide an effective and modern ability for individuals and businesses to recover from the damage caused by riots, subject to appropriate limitations so that the public purse does not face unlimited liability. I believe there is considerable value to these improvements and look forward to working with you and the whole House to enable the Bill to progress in this Parliamentary session.

**8 March 2016**

## APPENDIX 5: 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.

For the business taken at the meeting on 9 March 2016 Members declared no interests.

### Attendance:

The meeting on the 9 March 2016 was attended by Baroness Drake, Lord Flight, Baroness Fookes, Baroness Gould of Potternewton, Lord Jones, Countess of Mar, Lord Moynihan, Lord Thomas of Gresford and Lord Tyler.