



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

24th Report of Session 2015–16

**Northern Ireland (Stormont
Agreement and Implementation
Plan) Bill**

**Driving Instructors
(Registration) Bill**

**Gambling (Categorisation and Use
of B2 Gaming Machines) Bill [HL]**

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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.

Membership

The members of the Delegated Powers and Regulatory Reform Committee are:

Baroness Drake	Lord Lisvane
Baroness Fookes (<i>Chairman</i>)	Countess of Mar
Lord Flight	Lord Moynihan
Baroness Gould of Potternewton	Lord Thomas of Gresford
Lord Jones	Lord Tyler

Registered 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 Parliamentary Archives. Interests related to this Report are in the Appendix.

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/hldprcrpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is hlddelegatedpowers@parliament.uk.

Historical Note

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

Twenty Fourth Report

NORTHERN IRELAND (STORMONT AGREEMENT AND IMPLEMENTATION PLAN) BILL

1. This Government Bill was brought from the House of Commons on 10 March, and is to have its Second Reading on 12 April. It is concerned with giving effect to the “Fresh Start Agreement” (the Stormont House Agreement and Implementation Plan) reached on 17 November 2015 between the United Kingdom Government, the Government of Ireland and the Northern Ireland Executive.
2. Clauses 1 to 5 of the Bill make provision about the ending of paramilitary activity connected with Northern Ireland, and delegate legislative power in a number of respects. There is a memorandum from the Northern Ireland Office (“NIO”) explaining the delegations.¹ We draw the attention of the House to two of them.

Clause 2(5)—Guidance about disclosure of information

3. Clause 2(1) confers on the Independent Reporting Commission, established by clause 1, the objective of promoting progress towards the ending of paramilitary activity, and subsection (2) requires the Commission to exercise its functions in the way it considers appropriate to meet that objective. Subsection (3), however, prohibits it from doing anything in the exercise of its functions which might:
 - (a) prejudice the national security interests of the UK or Ireland,
 - (b) put at risk the life or safety of any person,
 - (c) have a prejudicial effect on the prevention, investigation or detection of crime, or
 - (d) have a prejudicial effect on any actual or prospective legal proceedings.
4. Subsection (5) requires the Secretary of State to issue guidance about the exercise of the Commission’s functions in relation to the disclosure of information in the first two of those respects. The Commission is obliged to have regard to that guidance when exercising its functions. The current guidance must be published, but it need not be laid before Parliament, and accordingly it attracts no Parliamentary scrutiny procedure.
5. Paragraph 5 of the memorandum explains that the reason for the delegation is the need for flexibility; and we accept that much of what the guidance may contain would not for that reason be suitable material for inclusion in the Bill itself. However, we note that the Commission will be a statutory body exercising public functions, and as such its duty to “have regard” to the guidance must be discharged in accordance with normal public law

¹ [http://www.parliament.uk/documents/lords-committees/delegated-powers/NorthernIreland\(StormontAgreementandImplementationPlan\)BillDPM.pdf](http://www.parliament.uk/documents/lords-committees/delegated-powers/NorthernIreland(StormontAgreementandImplementationPlan)BillDPM.pdf)

principles. This means in effect that the Commission must comply with the guidance unless it can produce cogent reasons for not doing so in any case.

6. In our view, the existence of such a duty indicates that the requirement to issue guidance is as much a delegation of legislative power as if there had been an absolute obligation to comply with it. So we would, in the absence of compelling reasons to the contrary, expect the guidance to be subject to some form of Parliamentary control before it may take effect.
7. We do not find the reasons given, in paragraph 6 of the memorandum, for the absence of Parliamentary involvement—that the guidance is statutory, and published, and that its subject matter is mentioned on the face of the Bill—to be compelling in this respect, and we note that no precedent is offered. The final sentence of paragraph 5 explains that in some past cases, comparable provision has been contained in consensual documents, of a kind not usually seen by Parliament. However, the fact that the Commission must have “regard to” the guidance leads us to find that consideration as unpersuasive.
8. While aware of the particular timing and other difficulties attending the passage of this Bill, and the significant and sensitive constitutional character of its subject matter, **we nevertheless draw to the attention of the House the obligation in clause 2(5) to issue guidance, so that it may invite a further explanation from the Minister before considering whether the guidance should be subject to Parliamentary scrutiny before it takes effect. In view of the nature of the guidance in question here, we consider that a draft negative procedure, applied either to the guidance itself or to a statutory instrument bringing it into force, would be an adequate level of scrutiny.**

Clause 4—Supplementing the paramilitary activity agreement

9. Clause 4(2) and (3) confer a Henry VIII power enabling the Secretary of State, by affirmative regulations, to make such provision as she “considers appropriate for giving full effect to the agreement relating to paramilitary activity”. That agreement is defined to mean an agreement made between the UK and Irish governments “in pursuance of paragraph 5.1 of Section A of the Fresh Start Agreement” (which is in turn defined in that subsection). That paragraph reads as follows:

“Monitoring and Implementation

5.1 A four member international body including persons of international standing will be established by the UK and Irish Governments. The UK Government and the Irish Government will nominate one member each and the Executive shall nominate two members. The body will:

- report annually on progress towards ending continuing paramilitary activity connected with NI (or on such further occasions as required);
- report on the implementation of the relevant measures of the three administrations;

- consult the UK Government and relevant law enforcement agencies, the Irish Government and relevant law enforcement agencies and, in Northern Ireland, the Executive, PSNI, statutory agencies, local councils, communities and civic society organisations.”

We note that, although clause 1(1) refers to “the agreement”, paragraph 5.1 does not explicitly mention an ‘agreement’ as such.

10. This is on any view a vaguely defined power, as paragraph 20 of the memorandum seems to recognise: “The scope of the power will be determined by the terms of the agreement relating to paramilitary activity ...”, while at the same time acknowledging that the terms of the agreement are not yet available to the House.
11. Having regard to paragraph 5.1 of Section A of the Fresh Start Agreement, it seems to us that any further agreement made pursuant to that paragraph would most likely be concerned only with the structure and operation of the Commission and little more. We note that paragraph 20 of the memorandum gives a few illustrations of the kind of provision that NIO envisage might be made under clause 4 (accounts and audit; quorum); but those are of course merely examples, and the power could be exercised more broadly.
12. **We draw the uncertain nature and scope of this power to the attention of the House so that it may seek from the Minister a further explanation of its intended purpose, and assurances about the character of the provision intended to be made under it.**

Clause 5—Regulations winding up the commission

13. Clause 5 enables the Secretary of State to provide, by affirmative regulations, for winding up the Commission. This is another Henry VIII power—see subsection (3)(a)—which also enables clauses 1, 2 and 4 to be amended or repealed. There is a prior consultation obligation in subsection (2), and the regulations may include provision for destruction of the Commission’s records—see subsection (3)(c).
14. While the terms of the power are silent about the circumstances in which it might be exercised, we infer from paragraph 24 of the memorandum that the Commission would be wound up when the agreement for the purposes of which it is established comes to an end, by mutual agreement between the UK and Irish Governments, by or before 2021. That explanation seems to us to make the case for a delegation rather than provision on the face of the Bill, so as to afford the necessary flexibility to those responsible for reaching agreement. We therefore consider this delegation to be appropriate, particularly in view of the affirmative procedure that is to apply.

DRIVING INSTRUCTORS (REGISTRATION) BILL

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

GAMBLING (CATEGORISATION AND USE OF B2 GAMING MACHINES) BILL [HL]

16. This Private Member's Bill had its Second Reading on 11 March. It is concerned with Category B2 gaming machines which are more commonly known as fixed odds betting terminals and which are primarily made available to the public in licensed betting premises.
17. The purpose of the Bill is to reduce the maximum charge which may be made for a single use of a Category B2 machine from £100 to £2. It does this by amending the Categories of Gaming Machine Regulations 2007 ("the 2007 Regulations"). As with all other categories of gaming machine under the Gambling Act 2005, the maximum charge for use for a Category B2 gaming machine is set out in regulations made under section 236 of that Act.
18. Clause 1(3) inserts an additional provision into the 2007 Regulations which will require the maximum charge for use for a Category B2 gaming machine to be reviewed every 3 years. It also confers a delegated power enabling the maximum charge for use to be "amended in line with inflation".
19. We note that nothing is said about:
 - who is to exercise this delegated power,
 - what form the exercise of the power is to take (for example, whether it is to be by regulations in a statutory instrument), or
 - what level of Parliamentary scrutiny is to apply.
20. Also, the drafting fails to make clear how the power is to operate alongside the existing powers conferred by section 236 of the Gambling Act 2005. If the intention is to restrict the scope of those powers, we consider the Bill should amend that section directly, rather than having a delegated power in subordinate legislation. **We draw these matters to the attention of the House so that the necessary changes can be made if the Bill proceeds further.**

APPENDIX 1: MEMBERS AND DECLARATIONS OF INTERESTS

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For the business taken at the meeting on 16 March 2016 Members declared no interests.

Attendance:

The meeting on the 16 March 2016 was attended by Baroness Drake, Baroness Fookes, Lord Jones, Countess of Mar, Lord Moynihan, Lord Thomas of Gresford and Lord Tyler.