

# HOUSE OF LORDS

## Delegated Powers and Regulatory Reform Committee

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19th Report of Session 2015–16

**Direct Planning (Pilot) Bill [HL]**

**Mesothelioma (Amendment) Bill [HL]**

**Planning (Subterranean Development) Bill [HL]**

**Cities and Local Government Devolution Bill [HL]:  
Government Response**

**Immigration Bill: Government Response**

**Welfare Reform and Work Bill: 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.

### *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](http://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/hldprrcpublications](http://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 [hlddelegatedpowers@parliament.uk](mailto: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 other acts specified in the Committee's terms of reference.

# Nineteenth Report

## DIRECT PLANNING (PILOT) BILL [HL]

1. This Private Member's Bill had its Second Reading on 20 November 2015. It seeks to encourage greater local involvement in planning policy, and confers three sets of delegated powers, all exercisable by regulations, in the following provisions:

- Clause 1(1) provides for pilot schemes; the power is amplified in clauses 2(1) and 3(2)) and requires affirmative procedure.
- Clause 4(3) provides for rules as to acceptable evidence for the purposes of clause 4(2), which is concerned with the disbursement of funds allocated for planning purposes. This power is subject to negative procedure.
- Clause 7(3) enables regulations to bring clauses 1 to 6 into force and, as is usual, is not subject to a scrutiny procedure.

There are aspects of each of these powers to which we wish to draw the attention of the House.

### Clause 1(1) – Pilot schemes for local participation

2. Clause 1(1) requires the Secretary of State to provide by regulations for “pilot schemes” enabling local residents to participate in developing local planning policy. Subsection (2) requires the regulations to include –

- Provision for the development of a “form-based design code” (see paragraphs (a) and (c); and clause 3, where the expression is defined). Clause 3(2) requires the regulations to specify the process for developing the codes, and to provide for their approval by a referendum among local residents, conducted under rules to be set out entirely in the regulations.
- Provision for enabling the conducting of a “charrette” (defined in subsection (5) of clause 2), which also requires the regulations to specify circumstances in which a planning authority *must* require a charrette to be conducted.

The regulations may provide for pilot schemes about other forms of local participation as well.

3. **We make the following recommendations about the powers conferred by clause 1(1):**

- **The period for which pilot schemes are to have effect under regulations under clause 1(1) should be specified on the face of the Bill.**
- **It should be made clear whether those regulations are also to designate the areas for which pilot schemes are to have effect.**

- **It should be made clear whether the duty to make regulations extends to making provision about the funding arrangements under subsections (3) to (5) of clause 1.**
- **Clause 2 should be amended so as to clarify whether the “other ... body or person” who must, under subsection (2), make arrangements for the charrette, is to be specified in the regulations made by virtue of subsection (1).**

Furthermore:

- **We regard it as inappropriate for provision for the conduct of a referendum under clause 3(2) to be delegated to subordinate legislation without more provision on the face of the Bill.**

#### Clause 4(3) – Neighbourhood forums and community groups

4. Clause 4(1) imposes on local planning authorities the responsibility to support “neighbourhood forums” and “community groups”. “Neighbourhood forums” are defined in subsection (5) by reference to the Localism Act 2011 (but the reference should in fact be to the Town and Country Planning Act 1990, which the Localism Act 2011 amended). “Community groups” are not defined.
5. Subsection (4) requires that 5% of the “money allocated for local planning purposes” must be distributed “as a rolling grant” to support the work of the forums or groups. Subsection (2) precludes the “full disbursement of money allocated for local planning purposes” in the absence of evidence of practical and effective support to the forums and groups. However, it does not say how much less than the full amount *may* be disbursed.
6. Regulations must be made under clause 4(3) to set out rules for determining what types of evidence are acceptable for the purposes of subsection (2). We find that subsection to be unclear in its effect, not least because it appears to draw a distinction between a local authority and the local planning authority for the same area.
7. **We accordingly recommend that clause 4(2) should be amended to clarify the nature of the support for which evidence is to be provided in accordance with the rules to be set out in regulations under subsection (3).**

#### Clause 7(3) – Regulations about commencement

8. Clause 7(3) provides for clauses 1 to 6 to be brought into force on a date specified in regulations. **We recommend that those regulations should be made by statutory instrument.**

**MESOTHELIOMA (AMENDMENT) BILL [HL]**

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

**PLANNING (SUBTERRANEAN DEVELOPMENT) BILL [HL]**

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10. This Private Member's Bill had its Second Reading on 20 November 2015. It restricts the circumstances in which planning permission may be granted for "subterranean development" (defined in clause 1(2)). There is only one matter which we wish to draw to the attention of the House, namely that **we recommend that the power conferred by clause 6(2) (to appoint by regulations the day on which clauses 1 to 5 are to come into force) should be exercisable by statutory instrument.**

**CITIES AND LOCAL GOVERNMENT DEVOLUTION BILL [HL]:  
GOVERNMENT RESPONSE**

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11. We considered Commons amendments to this Bill in our 17th Report of this Session.<sup>1</sup> The Government have now responded by way of a letter from Baroness Williams of Trafford, Parliamentary Under Secretary of State at the Department for Communities and Local Government, printed at Appendix 1.

**IMMIGRATION BILL: GOVERNMENT RESPONSE**

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12. We considered this Bill in our 17th Report of this Session.<sup>1</sup> The Government have now provided an initial response by way of a letter from Rt Hon. Lord Bates, Minister of State at the Home Office, printed at Appendix 2.

**WELFARE REFORM AND WORK BILL: GOVERNMENT  
RESPONSE**

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13. We considered this Bill in our 13th Report of this Session.<sup>2</sup> The Government have now responded by way of a letter from Rt Hon. Lord Freud, Minister of State for Welfare Reform at the Department for Work and Pensions, printed at Appendix 3.

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<sup>1</sup> 17th Report, Session 2015–16, [HL Paper 73](#).

<sup>2</sup> 13th Report, Session 2015–16, [HL Paper 56](#).

## APPENDIX 1: CITIES AND LOCAL GOVERNMENT DEVOLUTION BILL [HL]: GOVERNMENT RESPONSE

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Letter from Baroness Williams of Trafford, Parliamentary Under Secretary of State at the Department for Communities and Local Government, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

I am writing to respond to the points your committee raised in its seventeenth report of session 2015/16 in relation to the Cities and Local Government Devolution Bill.

### **Amendment 36 - Power to make provision about local authority structures and boundaries**

As I explained in my letter of 29 June, the context for these regulations making provision about local authority structures will be the implementation of devolution deals, specifically fast tracking the processes of such legislation as the Local Government and Public Involvement in Health Act 2007. I also commented, as you rightly refer, to the need for consent by all councils being sufficient safeguard that fast tracking will not remove inappropriately any essential constraint or protection. Notwithstanding this, we subsequently introduced a further safeguard by requiring that the use of this regulation power must be accompanied by the transparency given by a specific report to Parliament setting out the context (i.e. describing the bespoke deal) and providing information about any consultations or representations in connection with the regulations.

During the passage of the bill, it became very clear that in certain circumstances, and in particular in relation to structural or boundary change, the consent provisions as initially drafted gave to any single council in an area an effective power of veto over any such change, even if as might be the case in two tier local government, another council in that same area was in favour. The potential for the exercise of such veto may close down consideration and discussion of any such proposals regardless of the wider benefits they could bring to an area or the degree to which they had local support.

Amendment 36 removes that barrier to discussion and consideration of proposals, and, as has been made clear in debate in the Commons, is designed to facilitate the continuation of such wider conversations which it would be hoped would lead to a consensus across the area. We have made very clear that whenever the Secretary of State exercises these powers, he will maintain the preference for consensus, but with this Amendment there is greater flexibility to deliver devolution deals and the underpinning governance which areas want and need.

We have provided this flexibility for a trial period until March 2019, during which we expect to be negotiating devolution deals across the country. In this context of devolution deals, we believe that the safeguards now provided for in the Bill are sufficient and appropriate. Moreover, since these regulations merely involve fast tracking processes for making structural and boundary changes in existing legislation, we do not believe it would be appropriate for them in any event to introduce in these processes further procedures such as those applicable to the establishment of combined authorities under the Local Democracy, Economic Development and Construction Act 2009.

**Amendment 53 - Sub-national Transport Bodies**

The very nature of temporary transfers of functions is that they would be for a clearly limited or interim time. If some temporary transfers of functions work well and there is evidence to show that there would be value in effecting permanent transfers, then there will be further regulations giving effect to that permanent transfer which will be subject to the affirmative resolution procedure. In considering such regulations the House would be able to reflect on lessons learned and experience from the temporary transfer. This gives the right level of assurance that permanent transfers will have to be approved by a positive vote and that is what the Government's proposals provide for. Obviously where temporary transfers do not justify being made permanent, no such proposals would come to the House. It is disproportionate that permanent transfers potentially have to have two affirmative resolution procedures for both sets of regulations. There is the opportunity to pray against proposals for temporary transfers under the negative resolution procedure and we consider that the combination of the approvals processes we have proposed gives Parliament the right level of involvement in decisions to transfer responsibilities to STBs.

**11 January 2016**

## **APPENDIX 2: IMMIGRATION BILL: GOVERNMENT RESPONSE**

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### **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**

I would also like to take the opportunity to make an initial response to your Committee's 17th Report of Session 2015–16 on the Bill. We are grateful for the Committee's scrutiny of the Bill, and are considering possible amendments to the Bill in response to that Report. I am sorry that you found failings in the department's Delegated Powers Memorandum, and I have asked officials to reflect on these before we publish a response. Meanwhile, it may be helpful for me to provide some further information in response to certain specific matters raised by the Report.

We note that paragraph 17 of the Report highlights a need for further explanation of the powers in clauses 16(2) and (3) and 43(2) and (3) to amend the Bill itself when making provision similar to the Bill in Wales, Scotland or Northern Ireland. This wording follows that in section 53(2) of the Immigration Act 2014. I can confirm that the intention behind these provisions is to allow for the effective extension of the relevant provisions to Wales, Scotland and Northern Ireland. We also wish to maintain the flexibility to do this either by making regulations amending this Act, by making regulations having a similar effect to the Act in relation to Wales, Scotland or Northern Ireland, or both.

Paragraph 18 of the Report calls for further explanation of the power of sub-delegation in clause 43(3)(b). That provision is intended to ensure that, if regulations make free-standing provision equivalent to that in clauses 39 to 42, they can also confer powers equivalent to those in clause 39(6) and (10). We acknowledge your concerns about who is to exercise this sub-delegated power and the arrangements for its Parliamentary scrutiny, and we will give these careful consideration.

In relation to paragraphs 20 to 24 of the Committee's Report, we acknowledge that regulations under section 4(5) of the Immigration and Asylum Act 1999 are subject to the draft affirmative procedure, and not the negative procedure as stated in paragraphs 89 and 102 of our Memorandum. We apologise for this error. We are accordingly giving due consideration to the recommendations at paragraphs 22 and 24 of the Report.

Paragraphs 25 to 27 of the Committee's Report identify a need for an explanation of the amendments in paragraph 13 of Schedule 9 to the Bill to the existing power in paragraph 15 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002. The purpose of the amendments is to allow the Secretary of State to amend Schedule 3 so that it extends to any or all of Wales, Scotland or Northern Ireland in particular with regard to the other amendments to Schedule 3 introduced by Schedule 9 to the Bill.

Paragraph 9 of Schedule 9 to the Bill inserts new paragraphs 1 OA and 1 OB into Schedule 3 of the 2002 Act. Paragraphs 1 OA and 1 OB will provide that where destitute families (in the case of paragraph 1 OA) or adult migrant care leavers (for paragraph 1OB) are ineligible for support provided by local authorities by the operation of paragraph 1 of Schedule 3 to the 2002 Act because they fall within the category of ineligible persons in paragraph 7B(1) of that Schedule, the Secretary of State may provide by regulations for local authority support in the form of accommodation and subsistence (and other support in the case of adult migrant care leavers) to be provided if certain conditions are met. As both paragraphs 1 OA and 1 OB concern persons to whom paragraph 1 of Schedule 3 applies by virtue of new paragraph 7B of Schedule 3, they only extend to England. The insertion of new paragraph 15(aa) and (d) is intended to provide the Secretary of State with the power to amend Schedule 3 to extend the application of these provisions to Wales, Scotland and Northern Ireland. Similarly, the insertion of new paragraph 15(e) and (f) is intended to provide the Secretary of State with the power to amend Schedule 3 to extend the application of new paragraph 1A to Wales, or to make provision to similar effect in Scotland or Northern Ireland.

In order to make the new provisions in Schedule 3 effective in Wales, Scotland and Northern Ireland it will be necessary to make some detailed modifications of Welsh, Scottish and Northern Ireland legislation. This will require detailed input from the devolved administrations which might itself be consequential on the main clauses and Parliament's views on them. It is considered appropriate for this to be done in secondary legislation once the main clauses have been approved by Parliament.

We believe the draft affirmative procedure is appropriate for these orders, to allow Parliament to scrutinise adequately the extension of the new provisions in Schedule 3 to other jurisdictions in the United Kingdom. Any order made under 15(d) will be subject to the draft affirmative procedure, while regulations made under the sub-delegated power in paragraph 15(d) will be subject to the procedure relevant to regulations in paragraph 16 of Schedule 3. We will give due consideration to the other concerns at paragraph 27 of the Committee's Report.

**12 January 2016**

### APPENDIX 3: WELFARE REFORM AND WORK BILL: GOVERNMENT RESPONSE

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Letter from Rt Hon. Lord Freud, Minister of State for Welfare Reform at the Department for Work and Pensions, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

The Committee's Report drew the House's attention to several areas in the Bill and made multiple recommendations. In this letter, I address the points raised on the changes to the benefit cap level; the changes to child tax credit; and the change of support for mortgage interest from a benefit to a loan. I will write again to the Committee on the points raised on social housing rents shortly.

The Government has or will shortly table amendments in response to the Committee's recommendations in order:

- For regulations changing the level of the benefit cap to always follow the affirmative procedure;
- For specified regulations made under provisions in clauses 7 and 8 to be submitted to the Social Security Advisory Committee;
- For regulations made under provisions in clauses 16, 17 and 19 to be submitted to the Social Security Advisory Committee.

Where the Government believes that changes are not required, its justification is set out below.

#### **Reduction of the benefit cap (clauses 7 and 8)**

The Committee recommended that Clause 7 should be amended so that new section 96, which it inserts into the Welfare Reform Act 2012, should reference single persons, couples and lone parents, and provide for the meaning of those terms to be specified in regulations. The Government does not consider this to be necessary as the current provisions in the Welfare Reform Act 2012 do not specify that a higher level is to apply to couples and lone parents. The Government has been very clear in debates and briefings that the higher tier of the cap levels will apply to lone parents and couples and that the lower tier levels will apply to single people without children, and I can repeat that this is the policy. Redrafting the provision in the way suggested would result in a provision that would overly complicate the legislation.

The Committee also recommended that the affirmative procedure should apply to regulations amending the level of the benefit cap using the power introduced in the new section 96A of the Welfare Reform Act 2012 by clause 8. The Government accepts the Committee's recommendation and has tabled an amendment to the Bill accordingly. This change will provide a considerable amount of additional Parliamentary scrutiny to any review of the level of the benefit cap.

The Committee further recommended that regulations made under the powers introduced by clauses 7 and 8 should be submitted to the Social Security Advisory Committee for consideration. The Government accepts the Committee's recommendation and will table an amendment to the Bill accordingly. The amendment will not cover those regulations relating solely to the level of the benefit because this will retain an appropriate level of control over the level of the

benefit cap for the Secretary of State for Work and Pension, as set out in clause 8. The Government believes this approach substantially addresses the Committee's recommendation.

#### **Clause 11(4) – changes to child tax credit**

I note the Committee's comments on the drafting of the memorandum in respect of the new power inserted into section 9 of the Tax Credits Act 2002 by clause 11. I acknowledge the Committee's view, and apologise for the inaccuracy contained within the memorandum. I welcome the Committee's view that the negative procedure is the appropriate level of scrutiny for regulations made under that power.

#### **Clauses 16 to 19 – loans for mortgage interest**

The Committee has expressed concern that clauses 16, 17 and 19 provide extensive powers for the establishing of a new loan system by way of negative procedure regulations and that more detail should be provided to justify this. The Committee commented that the affirmative procedure should apply to first use of the powers in any event. As the Committee acknowledge, the regulations made under these powers are likely to be lengthy and include large amounts of complex detail. While this is indeed the case, the Government would like to reassure the Committee that much of the provision which will be contained in the regulations will replicate the existing legislation.

Regarding the Committee's point that the power in clause 16(3)(d) could be used by a future Government to require loans to be repaid before a property is sold, the Government considers that these concerns are unfounded. There are good reasons why it would not be appropriate to require loans to be repaid early. For example, if repayment of loans were required when a person came off benefit or started work, this could lead to some people immediately falling into arrears of their mortgage payments, and would also work as a strong disincentive to find work or increase earnings.

Since the Government intends to use the powers to replicate existing SMI legislation, and will not be requiring early repayment, providing for debate on these regulations via the affirmative procedure would not seem to be a good use of Parliamentary time.

Also, using the affirmative procedure for regulations will make implementing the scheme more burdensome for which there would appear to be no good reason as current SMI regulations are subject to the negative procedure. For these reasons the Government does not intend to amend the Bill to implement this recommendation.

The report also recommends that regulations made under the powers introduced by clauses 16, 17 and 19 should be submitted to the Social Security Advisory Committee for consideration. The Government accepts the Committee's recommendation and has tabled an amendment to the Bill accordingly.

**18 January 2016**

#### **APPENDIX 4: MEMBERS AND DECLARATIONS OF INTERESTS**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://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 20 January 2016 Members declared no interests.

**Attendance:**

The meeting on the 20 January 2016 was attended by Baroness Drake, Lord Flight, Baroness Fookes, Baroness Gould of Potternewton, Lord Jones, Lord Thomas of Gresford and Lord Tyler.