

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

17th Report of Session 2016–17

**Health Service Medical
Supplies (Costs) Bill:
Government Response**

**Draft Legislative Reform
(Private Fund Limited
Partnerships) Order 2017**

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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>)	Lord Moynihán
Lord Flight	Lord Thomas of Gresford
Baroness Gould of Potternewton	Lord Thurlow
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.

Publications

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

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 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 certain instruments made under other Acts specified in the Committee's terms of reference.

Seventeenth Report

HEALTH SERVICE MEDICAL SUPPLIES (COSTS) BILL: GOVERNMENT RESPONSE

1. We considered this Bill in our 12th Report of this Session.¹ The Government have now responded by way of a letter from Lord O’Shaughnessy, Parliamentary Under Secretary of State for Health at the Department of Health, printed at Appendix 1.

DRAFT LEGISLATIVE REFORM (PRIVATE FUND LIMITED PARTNERSHIPS) ORDER 2017

Introduction

2. This draft Legislative Reform Order (LRO) has been laid by HM Treasury (HMT) with an Explanatory Document (ED) and Impact Assessment. The LRO is proposed to be made under section 1 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”), which allows a Minister to make provision by order for removing or reducing any burden resulting directly or indirectly from legislation; and to be subject to the affirmative resolution procedure.

Proposed changes

3. This draft Order concerns limited partnerships formed under the Limited Partnerships Act 1907 (“the 1907 Act”).
4. A limited partnership has two types of partner:
 - “General partners”, who manage the firm and enter into binding obligations on behalf of the firm, and are personally liable for its debts if it becomes insolvent; and
 - “Limited partners”, who are generally investors, may not bind the firm and are not liable for its debts unless they take part in its management.
5. HMT states that the purpose of the draft Order is to amend the 1907 Act to introduce a Private Fund Limited Partnership structure. This will be available to private investment funds—so *not* to funds authorised to be promoted to the general public—which are structured as limited partnerships, for example private equity and venture capital funds. It is designed to reduce the administrative and financial burdens that affect these funds under the current limited partnership structure.

1 Delegated Powers and Regulatory Reform Committee (12th Report, Session 2016–17, [HL Paper 94](#))

6. The draft Order proposes to enable a limited partnership which is an investment fund to be designated as a Private Fund Limited Partnership (PFLP), and to amend some of the provisions of the 1907 Act as they apply to PFLPs and to limited partners in PFLPs. In particular, article 2:
- removes the requirement for limited partners to contribute capital to a PFLP;
 - inserts into the 1907 Act a list of actions (described in the ED as “the White List”) which limited partners in a PFLP may take without being regarded as taking part in the management of the limited partnership—they include, for example, acting as a guarantor for the firm, approving the accounts, authorising the general partners to make an investment or incur a debt;
 - enables limited partners to appoint a person to wind up a PFLP if there is no general partner available to do so; and
 - enables the partners to make an agreement as to the winding-up of a PFLP.

Committee’s role

7. The Committee’s role is described in its first Report on an LRO: “When considering an LRO, our role is not to consider in depth the policy in the draft order, but to consider whether it is ‘appropriate’ to be made under the 2006 Act; if so, whether it meets the tests in the 2006 Act; and to consider the matters considered for other instruments by the Joint Committee on Statutory Instruments.”²

Tests in the 2006 Act and Parliamentary procedure

8. **We are satisfied, on the basis of the explanations provided in the ED, that the draft Order meets the tests set out in the 2006 Act and is appropriate for the Legislative Reform Order procedure; and that the affirmative procedure which HMT has proposed is also appropriate.**

APPENDIX 1: HEALTH SERVICE MEDICAL SUPPLIES (COSTS)

BILL: GOVERNMENT RESPONSE

Letter from Lord O'Shaughnessy, Parliamentary Under Secretary of State for Health at the Department of Health, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

The Committee's Report made four recommendations in relation to the Bill. Of these recommendations three relate to the powers of the Welsh Government. I am pleased to confirm that following successful discussions with the Welsh Government, we intend to accept all of the recommendations, and will amend the Bill accordingly (subject to the will of Parliament). We have tabled a set of amendments to address the points made by the Committee. A copy of the amendments is enclosed.

The Committee recommended that the current catch-all provision in section 264B (1) (1) of the 2006 Act to enable the Secretary of State to share information with any other prescribed person should either be clarified or removed. The Committee concluded that the general power in section 264B (1)(1) proposed to clause 6 to prescribe in regulations is too wide and not justified. We accept this recommendation, through our proposed Government amendment which will limit this power to any health service body that is already listed in section 9 of the NHS Act 2006 and NHS Foundation Trusts (which are not listed in section 9). This would have the effect of enabling, in regulations, the ability for the Government to share data with other health service bodies, such as clinical commissioning groups, but not anyone else.

The Committee suggested that the new provision on penalties for the failure of providers of NHS pharmaceutical and primary services to provide information about health service products in the NHS Wales Act should be consistent with that in the 2006 Act. In the case of penalties, the powers in relation to Wales are different to the UK as a whole in so much as Welsh Ministers will only be able to impose penalties of pharmaceutical and primary medical services. In contrast, the 2006 Act allows for penalties to be imposed on drug manufacturers and suppliers, and the size of penalty reflects the ability of these bodies to pay much higher penalties. It would, therefore, be disproportionate if the level of the maximum fine allowed for in the 2006 Act were to be replicated in the NHS Wales Act. The proposed amendments would limit the single penalty to £10,000 and the daily penalty to £100.

In response to the Committee's further recommendation that the maximum penalty which may be imposed under new section 201A should be set out on the face of the Bill with a power to increase that maximum by regulations subject to the affirmative procedure, we accepted this recommendation and are intending to amend section 201A(5) of the NHS (Wales) Act 2006 to put this information on the face of the Bill. We will amend the Bill to enable through regulations the power to increase the maximum penalty, and these regulations will be subject to the affirmative procedure.

Finally, the Committee made a further recommendation, which stated that the catch-all provision to enable Welsh Ministers to share information with any other prescribed person, should either be clarified or removed. As with the first recommendation relating to the catch-all provision in section 264B (1)(1) of the 2006 Act, we will be amending the Bill to limit the types of bodies to which disclosures may be made, and to set the additional persons with whom information may be shared. Our proposed amendment would specify the following persons to whom information may be disclosed by virtue of section 201B.

- A Local Health Board or other person appointed under section 88(3)(b) of the National Health Service (Wales) Act 2006 to exercise the functions of a determining authority under Part 7 of that Act;
- A National Health Service Trust established under section 18 of the National Health Service (Wales) Act 2006;
- Any person who provides services to the Welsh Ministers or to any person falling within paragraph (a) or (b)
- Any body which appears to the Welsh Ministers appropriate to represent Part 4 providers or Part 7 providers (as defined by section 201A(8)).

I hope that the Committee find this response useful in their consideration of the Bill. A copy of the response will be placed in the Library.

7 February 2017

APPENDIX 2: MEMBERS AND DECLARATIONS OF INTEREST

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.

For the business taken at the meeting on 8 February 2017 Members declared the following interests:

Legislative Reform (Private Fund Limited Partnerships) Order 2017

Lord Moynihan

Interest in BP Inv1 LP, a limited partnership

Lord Thurlow

Interests in a number of limited partnerships

Attendance

The meeting on the 8 February 2017 was attended by Lord Flight, Baroness Fookes, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler.