HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

2nd Report of Session 2016–17

Children and Social Work Bill [HL]: Government Amendments

Investigatory Powers Bill

Bus Services Bill [HL]: Government Reponse

Children and Social Work 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 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
Lord Moynihan
Lord Thomas of Gresford
Lord Thurlow
Lord Tyler

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

Second Report

CHILDREN AND SOCIAL WORK BILL [HL]: GOVERNMENT AMENDMENTS

1. We considered this Bill in our 1st Report of this Session.[1] On Wednesday 15 June, immediately before the June adjournment, the Government tabled amendments which will have the effect of inserting 14 new clauses into the Bill. The new clauses contain delegated powers and the Department has provided a supplementary delegated powers memorandum.[2] The memorandum was not provided to us until Friday 24 June. This was disappointing and we would like to remind Departments that our guidance states that supplementary memoranda should be received "on (or before) the day an amendment is tabled" (paragraph 13).

Amendments 113 and 115

2. The amendments are concerned with local arrangements for safeguarding and promoting the welfare of children. We wish to draw the attention of the House to two of them: Amendments 113 and 115.

3. Amendment 113 on the Marshalled List inserts a new section 16E into the Children Act 2004 ("the 2004 Act"). The new section requires the safeguarding partners for a local authority area in England to make arrangements for themselves and "any relevant agency they consider appropriate" to work together in exercising their functions so far as those functions relate to safeguarding and promoting the welfare of children in the local authority area. The Bill does not define who is a "relevant agency" for these purposes. Instead, the definition is to be set out in regulations subject to the negative procedure (see section 16E(3)).

4. Amendment 115 inserts new section 16G into the 2004 Act which imposes a statutory duty on the safeguarding partners and the relevant agencies for a local authority area to act in accordance with the arrangements developed by the safeguarding partners under section 16E (see section 16G(4)). Subsection (6) allows the Secretary of State to make regulations for the purpose of enabling that duty to be enforced against a relevant agency.

5. The power conferred by new section 16E(3) is very wide: the only limitation on the bodies which may be prescribed as a "relevant agency" is that they must be bodies which exercise functions in relation to children in a local authority area. It appears, therefore, that "relevant agency" could include both public and private sector organisations (such as independent schools and privately run playgroups).

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1 Delegated Powers and Regulatory Reform Committee, (1st Report, Session 2016–17, HL Paper 13)

2 Department for Education, *Children and Social Work Bill [HL]: Supplementary Delegated Powers Memorandum*: http://www.parliament.uk/documents/lords-committees/delegated-powers/Children-and-Social-Work-Bill-Supplementary-DPM.pdf [accessed 8 July 2016]

6. The effect of a body being a relevant agency is potentially significant: not only will it allow the body to be made subject to a statutory duty to participate in the arrangements determined by the safeguarding partners, but will also expose the body in those circumstances to what are so far unspecified enforcement measures in the event of non-compliance. Given this, it seems to us that the bodies which are to be subject to this statutory duty should be specified on the face of the Bill. The Department does not explain in the supplementary memorandum why it is not considered appropriate to do this. Nor does the Department give any indication as to the kinds of bodies which it expects to be prescribed as relevant agencies. The only justification given for the delegated power in new section 16E(3) is the need to make changes in the future as circumstances relating to safeguarding change. However, that need could be met by the well-established practice of listing organisations on the face of the Bill coupled with a power to modify the list in the event of a change in circumstances.

7. **Accordingly, we consider that the delegated power conferred by section 16E(3) of the 2004 Act is inappropriate. In our view, the bodies which are relevant agencies for the purposes of section 16E of the 2004 Act should be specified on the face of the Bill; and, to the extent that it is necessary to have a regulation making power to modify the list of bodies which are relevant agencies, we consider that that power should be subject to the affirmative procedure.**

8. The power conferred by new section 16G(6) is also a very wide one: there is nothing to limit the kinds of enforcement measures which can be applied through the regulations, and therefore arguably the powers would extend to imposing criminal or civil penalties for non-compliance. Again, the Department in its memorandum has not explained the kinds of enforcement measures that are envisaged. This may well be because a decision cannot be reached on which measures are appropriate until it is known who the relevant agencies will be. That in our view, however, only serves to strengthen the argument that the identity of the relevant agencies should be placed on the face of the Bill.

9. **Accordingly, we consider that the delegated power conferred by section 16G(6) of the 2004 Act is also inappropriate. In our view, the measures which are to be available to enforce the statutory duty to act in accordance with the safeguarding partners' arrangements under section 16E should be specified on the face of the Bill.**

INVESTIGATORY POWERS BILL

10. This Bill had its Second Reading on 27 June. It will govern the use of investigatory powers by law enforcement, security and intelligence agencies, and other public authorities.

11. A draft of the Bill was the subject of pre-legislative scrutiny by a Joint Committee to which this Committee provided a memorandum setting out a number of findings and proposals.[3] We are pleased that the Government took on board the majority of them.

12. The Home Office has provided a delegated powers memorandum which explains the delegated powers conferred by the Bill.[4] There are only two provisions to which we wish to draw the attention of the House.

Clause 242(2) – power to make consequential provision

13. Clause 242(2) confers a power on the Secretary of State by regulations to make such consequential provision as he or she considers appropriate. This power may be exercised by amending or otherwise modifying provisions of primary or subordinate legislation, including *future* enactments (clause 242(3)).

14. In our view, while it is reasonable for there to be a need to amend past enactments to ensure that they fit with the provisions of the Bill, the same does not necessarily apply to future legislation which should be capable of taking account of the Bill's provisions when enacted. Accordingly, we expect a convincing case to be made for a power to use subordinate legislation to amend future primary legislation.

15. The Department's reasons for including a power to amend future enactments are set out in paragraphs 124 and 125 of the memorandum:

    (a) In paragraph 124, it is stated that the power is necessary because other Bills before Parliament at the same time as this Bill touch on the powers and public authorities covered by the Bill. Since it is impossible to predict what amendments might be made, it is necessary to allow for the possibility of consequential amendments to these enactments. In our view, while this explains a need for a power to amend legislation enacted in the *same Session* as the Bill, it does not explain the need for a wider power to amend *future enactments whenever passed or made.*

    (b) Paragraph 125 states:

> "… this potentially wide power is constrained by the requirement in subsection (2) that the Secretary of State must consider the provision to be appropriate in consequence of this Act. Accordingly, the power is effectively time limited and does not provide a power to amend legislation at any point in the future".

3 Joint Committee on the Draft Investigatory Powers Bill, *Draft Investigatory Powers Bill*, (Session 2015-16, HL Paper 93, HC 651), Appendix 3: http://www.publications.parliament.uk/pa/jt201516/jtselect/jtinvpowers/93/9313.htm#_idTextAnchor317 [accessed 8 July 2016]

4 Home Office, *Investigatory Powers Bill: Delegated Powers Memorandum*: http://www.parliament.uk/documents/lords-committees/delegated-powers/Investigatory-Powers-Bill-DPM.pdf [accessed 8 July 2016]

We found this paragraph difficult to understand. It seems to be saying that, because the scope of the power is limited to making consequential provision, in practice the power will be exercised shortly after enactment and not at any more distant point of time in the future. We are not convinced that this is necessarily right. But even if it were right, it suggests that the Department itself considers that the power to amend future enactments is not needed.

16. **Whilst we accept that a power to amend enactments passed or made in the same Session may be justified, we consider it inappropriate to extend that to future enactments. Accordingly, we take the view that the powers conferred by clause 242(2) and (3) are inappropriate to the extent that they permit amendment of future enactments passed or made after the current Session.**

17. Regulations under clause 242(2) are subject to the affirmative procedure where they amend or repeal a provision of primary legislation. The negative procedure applies in all other cases, including where the regulations *otherwise modify* a provision of primary legislation.

18. We have expressed concern on a number of occasions in the past about provisions such as this which confer power to make consequential provision in regulations, where the affirmative procedure applies if the power is exercised to amend primary legislation but the negative procedure applies where the power is exercised to *otherwise modify* primary legislation (that is, altering the effect of primary legislation otherwise than by a textual amendment). Our concern stems from the fact that a non-textual modification of primary legislation is capable of making changes which are no less significant than textual amendments.[5] Accordingly, it seems to us that in principle the same level of Parliamentary scrutiny should apply.

19. While the Government accept the general principle that changes to primary legislation by secondary legislation should be subject to the affirmative procedure they consider that there will be cases where the negative procedure is appropriate. In the view of the Government it is not practicable to spell out on the face of the Bill those cases where the affirmative procedure is appropriate, and those cases where the negative procedure should be used, without creating legal uncertainty. Accordingly, the Government suggest that it should be left to Ministerial discretion to decide the appropriate level of scrutiny in a particular case.

5 We describe the difference between a textual amendment and a non-textual modification in our 9th Report, Session 2015–16, HL Paper 42, para 18, concerning the Enterprise Bill: "The implications of this distinction can be illustrated by the following example. Paragraph 17 of Schedule 1 provides for the Small Business Commissioner to be a public authority for the purposes of the Freedom of Information Act 2000 ("the 2000 Act"). Clause 27 would allow a Minister to make regulations in consequence of that provision, including ones which amend or "otherwise modify" the 2000 Act itself. They would be affirmative procedure if direct textual amendments were made to the 2000 Act. However, if the regulations were drafted to say that the 2000 Act applied to the Commissioner as if certain specified provisions were left out, they would attract only the negative procedure as the Act would be "otherwise modified" rather than amended. The effect in law however would be the same: it would still be a Henry VIII provision."

20. We remain unconvinced by the Government's arguments, particularly by the suggestion that it is appropriate for the level of Parliamentary scrutiny to be determined by Ministers rather than Parliament. We also note that, by way of comparison, clause 147 of the Policing and Crime Bill, currently before the House, confers equivalent powers to make consequential provision but does not include a power to otherwise modify primary legislation. This leads us to wonder whether in fact there are likely to be relatively few occasions when the powers to otherwise modify primary legislation need to be exercised so that any perceived concerns about the affirmative procedure applying are unlikely to matter in practice.

21. **Accordingly, we remain of the view that the affirmative procedure should apply to the exercise of a power to amend primary legislation– even if it is dressed up as a power "to otherwise modify" an Act–save in very exceptional circumstances which need to be convincingly justified in the memorandum.**

Schedule 8, paragraph 33 – power to make consequential provision in connection with the combination of warrants and authorisations

22. Schedule 8 enables warrants and other authorisations issued under the Bill and other legislation to be combined in a single warrant. The Department explains that the ability to combine warrants and authorisations in this way will ensure that the relevant authorities who have the power to issue or approve the warrants have a complete picture of the intrusive techniques which are proposed for a particular operation, and can therefore assess the necessity and proportionality of the warrant.

23. Part 4 of Schedule 8 includes provisions which modify the way in which the regimes for each of the individual warrants and authorisations work so that they can operate effectively within the context of a combined warrant. Paragraph 33 of Schedule 8 confers power on the Secretary of State by regulations to make further modifications in consequence of the provisions in the Schedule. The power allows the amendment of primary legislation (including the amendment of Schedule 8 itself).

24. The Department's reasons for including paragraph 33 of Schedule 8 are set out in paragraph 153 of the memorandum. It states that, while every effort has been made to take account of the implications of these combinations for other Acts, the provisions are complex and it is possible that it will be necessary to make further consequential amendments. We consider that in general this provides a reasonable explanation for the power, particularly having regard to the fact that the affirmative procedure applies. There are however two aspects that we would draw to the attention of the House.

25. The first is the fact that paragraph 33 of Schedule 8 includes a power to amend the provisions of Schedule 8 itself. In our view, a convincing case needs to be made for a delegated power which allows a provision of the Bill to be amended after enactment. We are disappointed that the Department has given no reason why a power to amend Schedule 8 itself is needed.

26. **Accordingly, the House may wish to invite the Minster to explain why there is a need for the power to amend Schedule 8 itself. In the absence of a very convincing explanation, we would find this aspect of the power to be inappropriate.**

27. Our second concern is the fact that the powers conferred by paragraph 33 of Schedule 8 include a power to amend *future* enactments whenever passed or made. The Department's reasons for including a power to amend future enactments are identical to those given in respect of the similar power in clause 242.

28. **As we have explained in relation to clause 242, whilst a power to amend enactments made or passed in the same Session may be justified, we are not convinced by the Department's reasons with regard to future enactments. The same applies to paragraph 33 of Schedule 8. Accordingly, we consider that the powers conferred by paragraph 33 of Schedule 8 are inappropriate to the extent that they permit amendment of future enactments passed or made after the current Session.**

BUS SERVICES BILL [HL]: GOVERNMENT RESPONSE

29. We considered this Bill in our 1st Report of this Session.[6] The Government have now responded by way of a letter from Andrew Jones MP, Parliamentary Under Secretary of State at the Department for Transport, printed at Appendix 1.

CHILDREN AND SOCIAL WORK BILL [HL]: GOVERNMENT RESPONSE

30. We considered this Bill in our 1st Report of this Session.[7] The Government have now responded by way of a letter from Lord Nash, Parliamentary Under Secretary of State for Schools at the Department for Education, printed at Appendix 2.

6 Delegated Powers and Regulatory Reform Committee, (1st Report, Session 2016–17, HL Paper 13)
7 *Ibid.*

APPENDIX 1: BUS SERVICES BILL [HL]: GOVERNMENT RESPONSE

Letter from Andrew Jones MP, Parliamentary Under Secretary of State at the Department for Transport, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

Clause 4

We note that paragraph 9 of your Report indicates that the House may wish to seek a fuller rationale for the power in new section 123A(4). As set out in your Report, the Bill provides that Mayoral Combined Authorities are franchising authorities, and that other categories of local transport authority are able to become franchising authorities via the delegated power conferred by the final sentence of new section 123A(4).

We would have been happy to provide a fuller explanation of our rationale for this power by way of a supplementary memorandum had such clarification been sought before your Committee reported. I hope the further information below helps to clarify the Government's position.

Moving to a model of franchising is a big decision which is likely to have implications for passengers, bus operators and the local transport authority itself. Our view is that strong governance and accountability are key to making franchising a success, together with a commitment to improving transport, and a coherent and sensible geography. Mayoral combined authorities, when established, will provide clear, centralised decision-making for transport across a relatively wide local area, be that city areas like Greater Manchester, or regions like Greater Lincolnshire. The Mayor will be the individual responsible for deciding whether or not to implement franchising, and can be held accountable for that decision. As such, our view is that authorities that plan to move to the Mayoral Combined Authority model are best placed to make franchising a success.

Your Report highlights at paragraph 7 the fact that there are currently no combined authorities with mayors, and we would like to take this opportunity to clarify the wording used in the Delegated Powers Memorandum. Although there are no combined authorities with a mayor, a number of combined authorities have committed to move towards the Mayoral Combined Authority model, with work ongoing to establish the new governance arrangements via Orders that will be made under the Local Democracy, Economic Development and Construction Act 2009 as amended by the Cities and Local Government Devolution Act 2016. Those combined authorities have expressed interest in pursuing bus franchising as a potential route to improving local bus services if such orders are made.

We want to see local bus operators continuing to invest and develop services to the benefit of passengers. By limiting access to franchising powers in the first instance to Mayoral Combined Authorities, there will be greater clarity regarding the areas within which franchising might be introduced first. This will enable bus operators to take commercial decisions accordingly. Government does not however want to preclude other types of authority from becoming franchising authorities in future if there is a compelling case for doing so, and as such thinks the delegated power conferred by the final sentence of new section 123A(4) provides the best route to achieving that outcome.

Clause 17

The Committee made a number of proposals in relation to the "Open Data provisions" at Clause 17, recommending that: the purpose for which the information can be used, and the persons or description of persons to whom the information is to be disclosed, should be placed on the face of the Bill and that the Secretary of State should have a duty to consult before making regulations under this provision.

The Government accepts these recommendations and we intend to table amendments to this effect at Lords Report stage.

Clause 18

I note that the Committee now appreciates the rationale for the proposed new power in clause 18 in the original memorandum, and apologise that this as not sufficiently clear in our initial memorandum to you.

Clause 22

We have considered carefully the concerns of the Committee at paragraphs 27 to 31 about Clause 22 (power to "otherwise modify" primary legislation) and the Committee's view that "the affirmative procedure should apply to the exercise of a Henry VIII provision - even if it dressed up as a power to "to otherwise modify" and Act - save in very exceptional circumstances which again must be convincingly justified in the memorandum."

The Government's starting point is that regulations which make textual changes to Acts should be subject to the affirmative procedure. This covers both textual amendments and repeals. It is rare for non-textual modifications to be made instead of textual amendments. Where textual amendment is the appropriate method for effecting a change that is what the Government would normally expect to be used. Where non-textual modifications are appropriate then the Government continues to believe that the negative procedure is appropriate. In coming to this view, the Government has considered carefully the views of the Delegated Powers and Regulatory Reform Committee as expressed in a number of its reports and this reflects the Government's position in response to the Committee's reports on previous Bills (including the Counter Terrorism and Security Bill and the Small Business, Enterprise and Employment Bill).

1 July 2016

APPENDIX 2: CHILDREN AND SOCIAL WORK BILL [HL]: GOVERNMENT RESPONSE

Letter from Lord Nash, Parliamentary Under Secretary of State for Schools at the Department for Education, to Baroness Fookes, Chairman to the Delegated Powers and Regulatory Reform Committee

I am grateful to the Committee for its careful consideration of the merits of the Bill and I would like to take the opportunity to respond on the three areas to which the Committee drew attention in order to help the House with its deliberations on these points.

Functions of the Child Safeguarding Practice Review Panel

Arrangements: As the Committee notes, the Bill sets out the functions of the new Child Safeguarding Practice Review Panel through a combination of provisions on the face of the Bill and arrangements to be made by the Secretary of State.

The Committee is right in identifying the Panel's functions as key to the successful operation of the policy. I have considered and agree with the Committee's argument that these arrangements will play a significant role in shaping the role and actions of the Panel.

I therefore intend to make amendments to the Bill reflecting the Committee's recommendation that these arrangements should be subject to affirmative Parliamentary scrutiny.

Guidance: The Committee also suggests that the requirement that the Panel have regard to guidance amounts to regulation of the Panel's discharge of its functions and as such that the guidance should be subject to negative Parliamentary scrutiny.

I note here the Government policy that guidance should not be used to circumvent the usual way of regulating a matter. If the policy is to create rules that must be followed, the Government accepts that this should be achieved using regulations subject to parliamentary scrutiny and not guidance. The purpose of guidance is to aid policy implementation by supplementing legal rules. There is vast range of statutory guidance issued each year and it is important that guidance can be updated rapidly to keep pace with events. There is nothing to prevent Parliament from scrutinising guidance at any time. In certain exceptional circumstances it may be appropriate for guidance to be laid before Parliament or subject to the negative procedure.

Naturally, I intend to maintain this position in relation to guidance in this instance. Indeed it seems to me that the Committee's previous recommendation helpfully clarifies matters in this regard, as this will lead to a new affirmative regulation-making power relating to the Panel's functions, to be supplemented by practical guidance.

Regulated settings: the Committee recommends that there should be a definition on the face of the Bill of the "regulated settings" in which a child death triggers a notification to the Panel, with a regulation making power subject to the affirmative procedure to make future modifications.

The Government has weighed carefully the need for detail on the Face of the Bill regarding notification requirements and the ability to respond to the evolving local architecture in children's social care.

I wish to respond positively to the Committee on this point and have taken further advice on this question in light of the recommendation. I believe the underlying objective of providing greater clarity on scope may best be achieved by making amendments referring to groups of children covered by notification requirements rather than referring exclusively to "settings"–subject, of course, to the views of Counsel on this point of detail. I propose also to follow the Committee's recommendation to take a power to amend such descriptions (by affirmative procedure) in case of future changes.

Power to test different ways of working

I am particularly grateful for the efforts the Committee has made in relation to clause 15. It is always challenging with piloting powers like this one to strike the right balance between genuinely enabling locally driven innovation and ensuring proper Parliamentary scrutiny.

Report to Parliament: I am content to action the recommendation that the Secretary of State should provide Parliament with a report to explain the expected benefits of any proposed changes, and what protections the relevant local authority proposes to put in place. This is exactly the sort of information I would expect local authorities to provide the Secretary of State with to support a request for use of the power. I have no hesitation in committing to sharing that information with Parliament, and I believe members of both Houses will find reports along the lines the Committee recommends extremely helpful when they consider orders under the power.

Scrutiny procedure: The Committee made a further suggestion relating to the scrutiny procedure for orders made under clause 15–that orders modifying or disapplying legislation subject to the affirmative route should themselves be made by the affirmative route. On the same reasoning, the Committee argues that the same procedure should apply where secondary legislation is the result of an obligation imposed by primary legislation (i.e. in instances where there is a duty to make regulations rather than a power to do so).

I accept the Committee's logic as regards modifications to legislation that was subject to the affirmative procedure and intend to make relevant amendments to the Bill.

I do not propose to make amendments in relation to the second part of the recommendation. A review, albeit not exhaustive, of the regulation-making powers which might be covered by clause 15 reveals nothing in the nature of an obligation to make regulations. There are instead examples of drafting that tend to suggest a power–"the Secretary of State may for the purposes of… make regulations"–but even were this not the case, the position is further complicated by related provisions setting out what such regulations "may" address. To pursue the recommendation seems to me to risk applying different scrutiny procedures to pieces of legislation based on drafting conventions and preferences at the time they came into being.

Identity of the regulator: The Committee has looked closely at the approach the Bill takes to the regulation of the social work profession. It notes the substantial precedent for the approach taken but suggests that it is inappropriate that the new regulator is not identified on the face of the Bill, and questions strongly provisions allowing the abolition and transfer of the regulator at a future point.

The Committee will be aware that, since it reported, the Government has provided the House with a detailed policy statement[8] supported by indicative draft regulations[9] setting out its plans for the new regulatory arrangements. I enclose these with this letter, but in summary, these describe an approach whereby a bespoke regulatory regime is created for social workers in the first instance as an executive agency of Government. The longer term trajectory is then one that might see transfer of regulation to a more independent model following a commitment to consult three years after the new regulator is in place.

I am happy to make amendments setting out the initial position on the Face of the Bill. The Committee will understand that given the proposed approach it would not be appropriate to address directly its recommendation on future transfer. That said, I am happy to commit to providing a report to Parliament following the consultation described above and before any onward transfer of the regulator's role, and to make amendments setting out that process.

Powers to make subordinate legislation: The final issue the Committee highlights relates to clause 35(3). The Committee is correct in its understanding that the purpose of this provision is to give the regulator appropriate scope to set rules governing the discharge of its functions, and set out procedural and administrative arrangements.

The policy statement addresses the question of rules from paragraph 71 onwards. You will also see that the indicative regulations demonstrate that the intention is to include much of the core framework for each of the provisions within the secondary legislation itself, and of course that secondary legislation will itself be subject to the affirmative procedure. I would like at this point to emphasise two further points which persuade me that retaining the provisions at 35(3) is appropriate. Firstly, and as the committee notes, there is substantial precedent for the approach taken. Indeed there are very similar powers under the current regime. Secondly, that Policy in relation to rule-making powers for regulators has moved towards greater operational autonomy, following the Law Commissions' recommendation that regulators should be given powers to make legal rules which are not subject to approval by Government or any Parliamentary procedure.

4 July 2016

8 Department for Education and Department of Health, *Regulating Social Workers,* Policy Statement (June 2016): http://data.parliament.uk/DepositedPapers/Files/DEP2016–0569/Policy_Statement_Social_Work_Regulation_June_2016.pdf [accessed 8 July 2016]

9 Illustrative Regulations prepared by the Department for Education and the Department of Health to accompany passage of the Children and Social Work Bill through each House of Parliament: http://data.parliament.uk/DepositedPapers/Files/DEP2016–0569/Indicative_Social_Work_Regulations_England_June_2016_FINAL.pdf [accessed 8 July 2016]

APPENDIX 3: 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 6 July 2016 Members declared no interests.

Attendance

The meeting on the 6 July 2016 was attended by Baroness Drake, Lord Flight, Baroness Fookes, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler.