

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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17th Report of Session 2017–19

# **Smart Meters Bill**

## **Nuclear Safeguards Bill: Government Response**

## **Conscientious Objection (Medical Activities) Bill [HL]**

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Ordered to be printed 14 March 2018 and published 15 March 2018

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Published by the Authority of the House of Lords

### *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 who agreed this report are:

[Lord Blencathra](#) (Chairman)

[Lord Thomas of Gresford](#)

[Lord Flight](#)

[Lord Thurlow](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

### *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.

### *Publications*

The Committee's reports are published by Order of the House in hard copy and on the internet at [www.parliament.uk/hldprcpublications](http://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 [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 certain instruments made under other Acts specified in the Committee's terms of reference.

# Seventeenth Report

## **SMART METERS BILL**

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1. There is nothing in this Bill which we would wish to draw to the attention of the House. We do, however, wish to commend the helpful and well-drafted memorandum about the delegated powers in the Bill, provided by the Department for Business, Energy and Industrial Strategy<sup>1</sup>.

## **NUCLEAR SAFEGUARDS BILL: GOVERNMENT RESPONSE**

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2. 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 the Rt Hon. Lord Henley, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, printed at Appendix 1.

## **CONSCIENTIOUS OBJECTION (MEDICAL ACTIVITIES) BILL [HL]**

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

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1 Department for Business, Energy and Industrial Strategy, [Smart Meters Bill Delegated Powers Memorandum](#)

2 Delegated Powers and Regulatory Reform Committee, (13th Report, Session 2017–19, [HL Paper 77](#))

## APPENDIX 1: NUCLEAR SAFEGUARDS BILL: GOVERNMENT RESPONSE

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### Letter from the Rt Hon. Lord Henley, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

Thank you for providing recommendations relating to the Nuclear Safeguards Bill in the Delegated Powers and Regulatory Reform Committee’s 13th Report published on 9 February 2018. I am writing to provide the Government’s response to these recommendations.

#### *Clause 1(2): new section 76A(5) of the 2013 Act—power to specify activities that are, or are not, to be treated as civil activities*

I am pleased to be able to say that, having considered the Committee’s recommendation on this matter, I have tabled a government amendment which places the definition of “civil activities” on the face of the Bill. Although the Committee accepted that it might still be necessary to supplement this definition with a power to embellish its meaning in regulations, I have not, so far, found that to be necessary. This amendment removes the existing power to specify in regulations activities that are or are not to be treated as “civil activities” and replaces it with a definition on the face of the Bill without creating another power. This therefore reduces the number of powers created by the Bill.

#### *Clause 1(3): new section 112(1B) of the 2013 Act—power to specify meaning of “relevant international agreement”*

The Committee’s Report made a recommendation to sunset the power to specify an agreement as a “relevant international agreement”. The Government cannot accept this recommendation as the need for this power goes beyond the immediate impact of withdrawing from Euratom. The very nature of safeguards, a critical non-proliferation measure, is international by design.

The role of this power therefore goes beyond ‘fixing’ issues arising from Brexit: at its core is the need for the new safeguards regime to be able to adapt to the international changes that may be made, for example: International Atomic Energy Agency (IAEA) recommendations that the UK undertakes to adopt, or new Nuclear Cooperation Agreements (NCAs). Even the current regime, which is heavily reliant on Euratom’s international role, provides for this type of responsiveness through section 93(2)(d) of the Energy Act 2013. The Bill repeals section 93 and this power is more narrowly drawn.

To give an example of the type of international change we might see in the future—we expect to agree NCAs beyond those with the four countries that are the immediate priority (Australia, Canada, Japan and the US). Where such NCAs require particular nuclear safeguards reporting measures, it is vital that our regime, both in the scope of the Office for Nuclear Regulation’s purposes and in the scope of the relevant regulations, can accommodate that without significant uncertainty or delay.

The power to which the “relevant international agreement” relates is specific to nuclear safeguards. The power is there to ensure that we can incorporate additional reporting obligations resulting from international commitments into our safeguards regime: the UK could not claim to have an effective, future-proofed safeguards regime without it if new primary legislation were required every time we entered into an agreement that included new safeguards obligations.

While we cannot accept the Committee's recommendation on this matter, I can provide reassurance on the scrutiny in place that ensures proper oversight of the use of this power. Pursuant to the Constitutional Reform and Governance Act 2010, I expect any new international treaties relating to safeguards to go through the usual ratification processes as set out in that Act. Use of the power to make regulations specifying an agreement as a "relevant international agreement" is itself subject to the draft affirmative procedure in all cases, and any regulations made under section 76A(1)(b), the power that relies on these agreements, must be consulted on before further scrutiny procedures apply.

*Clause 2(1)—power to amend legislation relating to nuclear safeguards*

The Committee agreed that the power in Clause 2 is necessary and appropriately framed. In recognition that this is intended as a way of reflecting the new agreements with the IAEA required to establish the UK's civil nuclear safeguards regime, it recommended preventing the use of the power after a period of two years had expired.

I accept the principle of this recommendation that we should prevent the use of this power over an indefinite period. However, the regime is heavily reliant on wider international negotiations and it is therefore of the utmost importance that the power is not sunsetted prematurely. Prematurely sunseting this power could result in the relevant provisions becoming ineffective, leaving the UK without an effective domestic safeguards regime and in breach of any new international safeguards agreements put in place with the IAEA. The potential consequences of such failures are serious: the UK's reputation as a responsible nuclear State would be damaged, global confidence in safeguards regimes as a barrier to nuclear proliferation would be undermined and the UK's ability to conduct essential civil nuclear trade would be significantly curtailed, damaging industry.

The international negotiations relevant to this power are unprecedented in their nature. The Department considers it essential to retain a provision enabling the UK to adapt to any circumstances affecting international safeguards agreements between the UK and IAEA for a reasonable period following the UK's withdrawal from Euratom. I have therefore tabled an amendment which addresses the principle of the Committee's recommendation but provides for a "sunset" period of 5 years to ensure that the provision can function effectively in all scenarios, including that of an implementation period with the EU and Euratom.

**13 March 2017**

## **APPENDIX 2: MEMBERS AND DECLARATIONS OF INTEREST**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 14 March 2018, Members declared no interests.

### **Attendance**

The meeting on the 14 March 2018 was attended by Lord Blencathra, Lord Flight, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Thomas of Gresford and Lord Thurlow.