



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

24th Report of Session 2017–19

**European Union
(Withdrawal) Bill:
Further Government
Amendments**

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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 who agreed this report are:

[Lord Blencathra](#) (Chairman)

[Lord Flight](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

[Lord Rowlands](#)

[Lord Thomas of Gresford](#)

[Lord Thurlow](#)

[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 hldelatedpowers@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

EUROPEAN UNION (WITHDRAWAL) BILL: FURTHER GOVERNMENT AMENDMENTS

1. We reported on this Bill in our 12th Report of this Session.¹ On 23 April, in our 23rd Report of this Session we reported on various Government amendments.² Later on 23 April, the Government tabled further amendments, supported others and published a further supplementary delegated powers memorandum.³ **We wish to draw the attention of the House to a number of the amendments.**⁴

Amendment 47A—clause 8

2. In our 12th Report⁵ we were critical of the width of the delegated power contained in clause 8 (regulations in relation to international obligations). **We welcome amendment 47A, which removes clause 8 from the Bill.**

Amendment 53—clause 9

3. The Government have added their support to amendment 53, which removes the ability of Ministers to make regulations under clause 9 to amend or repeal the European Union (Withdrawal) Act itself. **We welcome the Government's support of amendment 53, which gives effect to a recommendation in our 12th Report.**⁶

Amendments 72F, 72G and 72H—Schedule 4

4. **We welcome amendments 72F, 72G and 72H, which give effect to our recommendation⁷ that the affirmative procedure should apply to all regulations relating to fees and charges made under Schedule 4.** Amendment 72G inserts an acceptable proviso that the negative procedure can apply where the amounts are merely updated to take account of inflation.

Amendments 75A and 75B—clause 17

5. In our 12th Report,⁸ we recommended that regulations under clause 17(1) and (5), other than those which amend or repeal primary legislation and which should be affirmative, should be subject to a sifting mechanism. Currently regulations made under clause 17(1) can only ever be made by the negative procedure. Amendments 75A and 75B allow for regulations made under clause 17(1) to be made under the affirmative procedure where Ministers, in their absolute discretion, take the view that the affirmative procedure should apply or (again in their absolute discretion) where they accept a recommendation from a scrutiny committee to upgrade the negative procedure to the affirmative procedure under the Government's preferred sifting mechanism.

1 Delegated Powers and Regulatory Reform Committee (12th Report, Session 2017–19, [HL Paper 73](#))

2 Delegated Powers and Regulatory Reform Committee (23rd Report, Session 2017–19, [HL Paper 124](#))

3 Department for Exiting the European Union, European Union (Withdrawal) Bill [supplementary Delegated Powers Memorandum \(3\)](#)

4 The amendments are published in the Marshalled List, available on www.parliament.uk

5 Delegated Powers and Regulatory Reform Committee (12th Report, Session 2017–19, [HL Paper 73](#)), paras 17–20

6 *Ibid.*, para 23

7 *Ibid.*, para 47

8 *Ibid.*, para 39

6. **Although we welcome the Government’s acceptance of the principle that regulations under clause 17(1) are able to be made under the affirmative procedure, this is no substitute for amendment 70, which gives effect to the sifting mechanism that we recommended in our 12th and 23rd Reports of this Session and which differs significantly from the version of the sifting mechanism currently found in Schedule 7.**⁹

Amendment 86A—clause 17

7. Amendment 86A states that no regulations may be made under clause 17(1) (consequential amendments) after the period of 10 years beginning with exit day. While this is an improvement on having no sunset provision at all in clause 17, **amendment 86A is no substitute for amendment 86, which gives effect to our recommendation¹⁰ that the power to make consequential provision conferred by clause 17(1) should be governed by a test of necessity rather than by what the Minister regards as appropriate.**

Amendment 104A—Schedule 4

8. Amendment 104A adds a partial sunset clause to regulations imposing fees or charges under Schedule 4, bringing it more into line with the two-year sunset provision found in clause 7(8).
9. **While we welcome amendment 104A as an improvement on having no sunset provision at all in Schedule 4, we welcome it as an addition to (rather than a substitution for) amendment 104, which gives effect to the recommendation in our 12th Report¹¹ that taxation, including tax-like charges, should not be possible in regulations made under Schedule 4.**

9 Delegated Powers and Regulatory Reform Committee (12th Report, Session 2017–19, [HL Paper 73](#)), paras 56 and 58; Delegated Powers and Regulatory Reform Committee, (23rd Report, Session 2017–19, [HL Paper 124](#)), paras 4–8

10 Delegated Powers and Regulatory Reform Committee (12th Report, Session 2017–19, [HL Paper 73](#)), para 37

11 *Ibid.*, para 45. See also our [23rd Report](#), paras 2–3.

APPENDIX 1: MEMBERS INTERESTS

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