

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

29th Report of Session 2017–19

**Courts and Tribunals (Judiciary and
Functions of Staff) Bill [HL]**

**Rating (Property in Common
Occupation) and Council Tax
(Empty Dwellings) Bill**

**Civil Liability Bill [HL]:
Government Response**

**Parental Bereavement (Leave and
Pay) Bill**

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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:

[Baroness Andrews](#)

[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/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.

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 Ninth Report

COURTS AND TRIBUNALS (JUDICIARY AND FUNCTIONS OF STAFF) BILL [HL]

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

RATING (PROPERTY IN COMMON OCCUPATION) AND COUNCIL TAX (EMPTY DWELLINGS) BILL

2. This Bill contains no delegated powers.

CIVIL LIABILITY BILL [HL]: GOVERNMENT RESPONSE

3. We considered this Bill in our 22nd Report of this Session.¹ The Government have now responded by way of a letter from the Rt Hon. Lord Keen of Elie QC, HM Advocate General for Scotland and spokesperson for the Ministry of Justice in the House of Lords, printed at Appendix 1.

PARENTAL BEREAVEMENT (LEAVE AND PAY) BILL

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

1 Delegated Powers and Regulatory Reform Committee (22nd Report, Session 2017–19, [HL Paper 123](#))

APPENDIX 1: CIVIL LIABILITY BILL [HL]: GOVERNMENT RESPONSE

Letter from the Rt Hon. Lord Keen of Elie QC, HM Advocate General for Scotland and spokesperson for the Ministry of Justice in the House of Lords, to the Rt Hon Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

I am writing in response to the House of Lords Delegated Powers and Regulatory Reform Committee's report of 19 April 2018 on the Civil Liability Bill (the Bill).

I welcome the care taken by the Committee in its scrutiny of the Bill. I have reflected carefully on the comments of the Committee and the views expressed subsequently by Peers during the Bill's Second Reading and Committee stages.

I will restrict my detailed response to the Committee to those clauses in the Bill upon which it has commented. These concern the measures in Part 1 of the Bill to reform the whiplash claims process.

Clause 1: DPRRC position - We take the view that it would be an inappropriate delegation of power for "whiplash injury", a concept central to a full understanding of the Bill, to be defined in regulations made by Ministers rather than being defined on the face of the Bill.

Clause 1: Government response

The Government certainly agrees that the injuries to be made subject to the measures in Part 1 of the Bill should be defined accurately to reflect the current body of medical opinion and how terms are used, in practice, in medico-legal claims. In developing the supplementary definition of "whiplash injury" included in the draft regulations published ahead of Committee on 8 May, the Government consulted with and obtained invaluable guidance from a group of expert stakeholders, including experienced medical practitioners and both claimant and defendant solicitors.

In the light of the Committee's report and the recent debates in the House, the Government accepts the argument that there is merit in placing the full definition on the face of the Bill. To this end, we have prepared, and will bring forward at Report stage, a Government amendment to achieve this.

In the Government's view it is essential that any definition can be adapted to respond to future medical or claims market developments. I am pleased that the Committee agreed that the definition should remain accurate. In addition, the definition needs to continue to reconcile the legal understanding with an accurate medical definition covering both injuries and symptoms. If the definition cannot be amended promptly it could have an adverse impact on both genuinely injured claimants and insured motorists. Therefore, the Government intends that the amendment will reserve a power to amend the definition by secondary legislation. We are proposing a number of controls in relation to the use of this power, including restricting its repeated use within specific periods, and consulting on any proposed changes with consultees set out on the face of the Bill.

Clause 2: DPRRC Position - in our view it would be an inappropriate delegation of power for damages for whiplash injury to be set in a tariff made by Ministerial regulations rather than on the face of the Bill. The tariff should be set out on the face of the Bill, albeit amendable by affirmative statutory instrument.

Clause 2: Government response

I note the Committee's concerns in relation to the proposed whiplash tariff and the delegation of power to the Lord Chancellor to set the tariff.

It remains the Government's view that it is right for the Lord Chancellor to set an appropriate and proportionate tariff through regulations in order to return control to a system in which the current levels of compensation, reflected in the Judicial College's guidelines, are, in the Government's view, too high, so contributing to increased motor insurance premiums. A tariff for whiplash claims to be set by the Lord Chancellor is consistent with other areas where the Government already controls and sets the rates of damages. For example, compensation paid for similar injuries in criminal compensation cases is subject to a tariff scheme administered by the Criminal Injuries Compensation Authority, and the Government also currently controls and sets the rate of bereavement damages.

The Government has prepared, and will bring forward at Report stage, an amendment to require the Lord Chancellor to carry out a triennial review of Section 1 of the Act with the first review to be completed before the end of three years beginning with the day on which those sections come fully into force. It includes a requirement for the Lord Chancellor to lay a copy of the report before Parliament.

The Government has ensured that the judiciary will retain a role by including a power to allow the courts to increase the amount awarded under the tariff in exceptional circumstances. We suggest that this 'uplift' should be capped at 20% as set out in the draft regulations. The Judicial College guidelines have not been disregarded in setting the proposed tariffs. They were fully considered, along with other a number of other factors and sources of data, when the Government set the proposed amounts to be included in the tariff. These figures have also been updated twice from those previously published in the whiplash consultation to reflect increases to the suggested compensation included in the Judicial College guidelines.

In relation to the comments made by the Committee in relation to minor psychological injuries such as

'travel anxiety', this is built into the tariff system in the same way that it is included in the current Judicial College guidelines. In line with the current judicial guidance, claims solely in respect to shock or minor travel anxiety without an accompanying physical injury will not receive an award of compensation, Claimants with more significant psychological issues will be dealt with outside of the tariff as these will be diagnosable psychological injuries, which are dealt with separately by the Judicial College.

I look forward to discussing the points raised by the DPRRC and by Noble Lords in further detail when the Bill reaches Report stage.

5 June 2017

APPENDIX 2: MEMBERS INTERESTS

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.