

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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45th Report of Session 2017–19

**Fisheries Bill: Government  
Response**

**Civil Partnerships, Marriages and  
Deaths (Registration Etc.) Bill**

**Stalking Protection Bill**

**Organ Donation (Deemed Consent)  
Bill: 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 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](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives.

### *Publications*

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### *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 [hldelegatedpowers@parliament.uk](mailto: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.

# Forty Fifth Report

## FISHERIES BILL: GOVERNMENT RESPONSE

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1. We considered this Bill in our 39th Report of this Session.<sup>1</sup> The Government have now responded by way of a letter from George Eustice MP, Minister of State at the Department for Environment, Food and Rural Affairs, and Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs, printed at Appendix 1.

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<sup>1</sup> Delegated Powers and Regulatory Reform Committee, *Thirty Ninth Report* (39th Report, Session 2017–19, HL Paper 226)

## **CIVIL PARTNERSHIPS, MARRIAGES AND DEATHS (REGISTRATION ETC.) BILL**

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2. This Bill was brought from the Commons on 29 October. It received a Second Reading in this House on 18 January. Committee stage is due to begin on Friday, 1 February.
3. It is a Private Member's Bill, sponsored in the Commons by Tim Loughton MP and in the Lords by Baroness Hodgson of Abinger. During the Second Reading debate, the Minister, Baroness Williams of Trafford, said that the Bill "includes many important issues that the Government fully support".<sup>2</sup>
4. The Bill:
  - confers powers on the Secretary of State that would enable him or her by regulations to reform the way in which marriages are registered in England and Wales, moving from a paper-based system to an electronic register (clause 1);
  - imposes a duty on the Secretary of State to make regulations to bring about equality between same-sex and other couples regarding their ability to enter civil partnerships (clause 2);
  - requires the Secretary of State to arrange for the preparation of a report on whether the law should be changed to require or permit the registration of pregnancy losses which cannot be registered as still-births (clause 3);
  - requires the Secretary of State to arrange for the preparation of a report on whether the law should be changed to enable or require coroners to investigate still-births; and confers a power on the Lord Chancellor, following publication of the report, to change the law by regulations (clause 4);
  - enables the Secretary of State by regulations to amend the Marriage of British Subjects (Facilities) Act 1915 and 1916 so that they no longer apply in England and Wales (clause 5(1)(a)).<sup>3</sup>
5. This short Bill confers no fewer than four Henry VIII powers.
6. The Home Office has provided a memorandum about the delegated powers in the Bill ("the Memorandum").<sup>4</sup> Those of concern to the Committee are described below.

### **Clause 1—Power to amend the Marriage Act 1949**

7. Earlier this Session, we reported on the Registration of Marriage Bill, sponsored by the Bishop of St Albans.<sup>5</sup> The Bill as introduced in the House of Lords confers a very wide power on the Secretary of State to

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2 HL Debs, 18 January 2019, [col 450](#)

3 This provision is essentially consequential on clause 1: see the [Delegated Powers Memorandum](#), paras 42 and 44.

4 Home Office, [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill Delegated Powers Memorandum](#)

5 Delegated Powers and Regulatory Reform Committee, [Registration of Marriage Bill \[HL\]](#) (21st Report, Session 2017–19, HL Paper 122)

make regulations about the registration of marriages in England and Wales. Following the Committee's criticism of that provision, amendments were made to narrow those powers and insert a sunset clause. That Bill was passed by the Lords, but no date has been fixed for a Second Reading in the Commons. Clause 1 of this Bill is in substantially identical terms to the Bishop of St Albans' Bill as amended by this House.

8. Clause 1(1) confers a Henry VIII power on the Secretary of State by regulations to amend the Marriage Act 1949 ("the 1949 Act") so as "to provide for a system whereby details relating to marriages in England and Wales will be recorded in documents used as part of the procedure for marriage, and entered into a central register which is accessible in electronic form".
9. The meaning of this rather obscure provision becomes clearer after reading subsection (2) and the Memorandum. It will enable the regulations to:
  - provide for the replacement of the existing certificates for marriage issued by a superintendent registrar (which serve as the authority for the marriage to proceed after civil preliminaries) with "a marriage schedule": this is to function not only as the authority for marriage, but also as the document the parties will sign at the solemnisation instead of a register book, and which records the particulars to be registered;
  - make broadly similar provisions for a marriage conducted in the Church of England or Church of Wales—except that "a marriage document" (rather than "a marriage schedule") will form the basis of the marriage registration, although not the authority for the marriage itself;
  - provide for the signing of the marriage schedule or document, its delivery to a registrar and the registration of the marriage particulars;
  - require the Registrar General to maintain a register of marriages in electronic form, which will replace the bound marriage register books currently held in register offices and in around 30,000 churches and other religious buildings;
  - remove provisions from the 1949 Act which are inconsistent with the new marriage registration provisions.
10. Subsection (3) would allow the regulations to create a criminal offence, punishable by a level 3 fine on summary conviction, for the purpose of enforcing a requirement that an individual must attend personally to deliver to the registrar a signed marriage schedule or marriage document.
11. Subsection (4) gives authority to the Secretary of State to confer, by the regulations, a tertiary legislative power on the Registrar General in six specified areas. He or she could be given the power, in particular, to determine by regulations the form or content of a marriage schedule or marriage document. This is achieved by widening the scope of the Registrar General's existing legislative powers in section 74(1) of the 1949 Act.

## 12. Furthermore:

- clause 5(1)(b) and (3) allows the Secretary to State to include in the regulations consequential amendments to both primary and secondary legislation;
- the affirmative procedure would apply to the regulations made by the Secretary of State which amend the 1949 Act or other primary legislation;
- clause 1 contains a sunset provision (in subsection (6)) that would prevent the Secretary of State from making any further regulations after the expiry of three years from the date on which he or she makes the first set of regulations.

13. The Memorandum gives no detailed justification for the delegation of these Henry VIII powers to the Secretary of State; nor does it explain why it would be impractical for the Bill itself to contain the main amendments to the 1949 Act. However, it does point out that the modernisation of marriage registration processes is both long-overdue and urgent, and that the powers conferred by clause 1 would enable changes to be made to the 1949 Act that would ensure a coherent system of marriage registration.<sup>6</sup>

14. Despite the Henry VIII nature of the power and the shortcomings of the Memorandum, we accept that clause 1 is a focused and tightly-drafted provision with a clear and worthwhile objective. There are, however, two matters that the Committee wishes to draw to the attention of the House.

15. The first concerns clause 1(4) which, as mentioned above, would allow the Secretary of State's regulations to widen existing powers to legislate given to the Registrar General by section 74(1) of the 1949 Act.<sup>7</sup> No Parliamentary procedure is specified for the exercise of those powers, and none is to apply to new powers sub-delegated under clause 1(4). This is justified in the Memorandum on the basis that—

“... it is appropriate that the Secretary of State is enabled to sub-delegate administrative aspects of the registration process to no procedure regulations made by the Registrar General for reasons of consistency with the Registrar General's existing powers, to reduce the number of statutory instruments required to be made, and in doing so, to enhance the clarity of the legislative scheme”.<sup>8</sup>

16. We do not find this persuasive. The matters specified in clause 1(4) are significant in nature and may well be of interest to Parliament, including in particular paragraph (a) which would enable the Registrar General to determine what particulars about the parties to the marriage must be specified in the marriage schedule and marriage document—and whether the names of the parties' respective mothers should be given as well as those of

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6 Home Office, [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill Delegated Powers Memorandum](#), paras 2 and 16

7 The Registrar General may currently prescribe by regulations (for example) the form of a marriage register entry and particulars to be included in the register.

8 Home Office, [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill Delegated Powers Memorandum](#), para 25

the fathers (an issue raised by several Members at Second Reading on 18 January).<sup>9</sup>

17. Sub-delegation of power without provision for parliamentary scrutiny of how that power is exercised breaks the important link between those empowered to make law and their accountability to Parliament. If this widening of tertiary powers without parliamentary scrutiny is a sign of “tertiary powers creep”, then it is an unwelcome development. In our view, regulations made by the Registrar General under the sub-delegated power should be subject to parliamentary scrutiny and that, given the width and significance of the tertiary powers conferred under clause 1(1) and (4), they should be subject to the affirmative resolution procedure.
18. The second matter concerns the sunset provision in clause 1(6). The Memorandum does not explain why the three-year period starts only from the day on which the first regulations are made under clause 1, rather from Royal Assent. Subsection (6) as currently drafted would allow the Secretary of State to delay indefinitely the making of any regulations at all even though, according to the Memorandum, reform of the marriage registration process is urgent. We take the view that, if it is indeed appropriate to confer these Henry VIII powers, Parliament should impose a clear deadline for their exercise.
19. **We therefore recommend that:**
  - **the affirmative procedure should apply to regulations made by the Registrar General under a power sub-delegated to him or her by regulations under clause 1(4); and**
  - **clause 1(6) should be amended so that the powers conferred by clause 1 will expire on the third anniversary of Royal Assent.**

#### Clause 2—Power to amend the Civil Partnership Act 2004

20. Clause 2(1) requires the Secretary of State to make regulations to change the law relating to civil partnership “to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships”.
21. Subsection (2) specifies that the regulations “must give effect to such equality within 6 months of [Royal Assent]”. The affirmative procedure would apply to the regulations if they amend primary legislation, otherwise they would attract the negative procedure (clause 5(6) and (7)).
22. As pointed out in the Memorandum, same-sex couples can choose between either a civil partnership or a same-sex marriage, while opposite-sex couples are able only to marry.<sup>10</sup> In a judgment handed down last year, the Supreme Court declared that provisions in the Civil Partnership Act 2004 (“the 2004 Act”) which restrict civil partnership to same-sex couples are incompatible with the European Convention on Human Rights (“ECHR”).<sup>11</sup>

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<sup>9</sup> HL Debs, 18 January 2019, [cols. 430, 432, 437 and 451](#)

<sup>10</sup> Home Office, [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill Delegated Powers Memorandum](#), para 2

<sup>11</sup> R (on the application of Steinfeld and Keidan) v Secretary of State for International Development, [2018] [UKSC 32](#)

23. The Memorandum gives a single sentence of justification for the delegation:
- “Proceeding by way of secondary legislation enables an ECHR incompatibility to be addressed quickly”.<sup>12</sup>
24. The Memorandum does not explain why the amendments to the 2004 Act needed to remedy the ECHR incompatibility do not appear on the face of the Bill. The amendments required appear to be straightforward. We note, for example, the Bill introduced by Baroness Burt of Solihull on 13 July 2017, clause 1 of which proposes the following simple amendments to the 2004 Act:<sup>13</sup>
- (2) In section 1 (civil partnership), in subsection (1) omit “of the same sex”.
  - (3) In section 3 (eligibility), omit subsection (1)(a).
  - (4) In section 86 (eligibility), omit subsection (1)(a).
  - (5) In section 138 (eligibility), omit subsection (1)(a).<sup>14</sup>
25. Amendments to clause 2 to incorporate these provisions would be neither lengthy nor complex, and they would come into force two months after Royal Assent (clause 6(3)). This would eliminate the need for affirmative procedure regulations.
26. The Memorandum does not indicate whether consequential changes are needed to other legislation (whether primary or secondary); but if they are, clause 2 could include a focused power to deal with these by regulations.
27. We are also puzzled that the Memorandum fails to mention that Ministers already have power to remedy by secondary legislation the ECHR-incompatible provisions in the 2004 Act. This is through an order-making power conferred by the Human Rights Act 1998, which attracts a super-affirmative procedure.<sup>15</sup> In our view it is inappropriate for this Bill to confer a different power with a less stringent Parliamentary procedure.
28. More generally, we consider the power conferred by clause 2 to be objectionable as a matter of principle. Under this country’s constitution, it is for Parliament not Ministers to make laws. This Committee and the Constitution Committee have repeatedly said that Henry VIII powers should be conferred only where there is very clear justification for them—which is wholly lacking in this case.
29. Moreover, Members of both Houses may well wish to debate the principle of allowing an opposite-sex couple to form a civil partnership, and to table amendments to the proposed legislation need to give effect to this. They would not have this opportunity with affirmative procedure regulations.
30. During the Second Reading debate in the Lords, the Minister said:

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12 Home Office, [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill Delegated Powers Memorandum](#), para 29

13 [Civil Partnership Act 2004 \(Amendment\) \(Mixed Sex Couples\) Bill \[HL\]](#), [Bill 60 (2017–19)]. The Bill has not had a Second Reading.

14 Clause 1(4) and (5) concern civil partnerships in Scotland and Northern Ireland, whereas clause 2 of this Bill extends to England and Wales only. Marriage and civil partnership are within the devolved competence of the Scottish Parliament and Northern Ireland Assembly.

15 Human Rights Act 1998, [section 10](#) and [Schedule 2](#)

“The Government have doubts about the clause’s ability in its current form to deliver an effective and comprehensive opposite-sex civil partnership regime in the time it provides for. In particular, we have some concerns about the lack of detail in the regulation-making power as drafted. We are pleased to be working closely with my noble friend and the Bill’s sponsor in the other place, Tim Loughton, to draft a new amendment to the Bill, which we hope to lay before the House in Committee. This will hopefully address the concerns about the current shape of the clause and ensure that the Bill can deliver a comprehensive and robust opposite-sex civil partnership regime as soon as possible.”<sup>16</sup>

31. These amendments may address some or all of the concerns identified above. But if they do not, **the Committee recommends that:**
- **the changes to the 2004 Act needed to remedy the ECHR incompatibility referred to in the Supreme Court’s judgment should appear in clause 2 itself;**
  - **the regulation-making power in clause 2 should be narrowed so that it would allow only for necessary consequential amendments to other legislation (with the affirmative procedure applying to changes to primary legislation, otherwise the negative procedure).**

#### Clause 4—Power to amend the Coroners and Justice Act 2009

32. Clause 4(1) requires the Secretary of State to make arrangements for the preparation of a report on whether the law should be changed to enable or require coroners to investigate still-births. We acknowledge that this provision concerns a particularly sensitive subject about which many, whether or not through direct experience, will feel very keenly.
33. Clause 4(4) confers a power on the Lord Chancellor, following publication of that report, to make regulations amending Part 1 of the Coroners and Justice Act 2009 (“the 2009 Act”) to:
- enable or require coroners to conduct investigations into still-births;
  - specify the circumstances in which those investigations are to take place;
  - provide for the purposes of those investigations;
  - make provision equivalent or similar to provision in [Part 1 of the 2009 Act] relating to investigations into deaths.
34. Subsection (5) prevents the power from being used:
- to create a criminal offence; or
  - to make provisions other than ones which are equivalent or similar to those already in Part 1 of the 2009 Act.
35. Clause 5(2) and (3) allows the Lord Chancellor to include in the regulations under clause 4(4) consequential amendments to both primary and secondary legislation.

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16 HL Debs, 18 January 2019, [col. 452](#)

36. Regulations under clause 4(4) which amend primary legislation would be subject to the affirmative procedure, otherwise the negative procedure would apply (clause 5(6) and (7)).
37. There is a sunset provision in clause 4(6): the power to make regulations will lapse five years after publication of the report under subsection (1).
38. The Memorandum<sup>17</sup> explains that:
- the Secretary of State’s report under subsection (1) will “necessarily consider the views of stakeholders such as the Chief Coroner, coroners themselves, medical professionals, bereaved parents and organisations that support them”;
  - any change in the law “will therefore be the product of a thorough consideration of all available evidence and views”;
  - “it is not possible to undertake this exercise in the limited time available during the passage of the Bill, however, this is an area where consideration of change is considered important and the opportunity to use the Bill to make any necessary change should not be lost due to lack of time”.
39. In our view, these are very weak reasons for asking Parliament to confer this important Henry VIII power on the Lord Chancellor. The preparation of the report referred to in subsection (1) will take time, as will the Government’s preparation of their response to the report and their decision whether to proceed with legislation to give effect to its recommendations. Any legislation is unlikely to be regarded by Ministers as a priority in view of the lengthy deadline imposed by subsection (6).
40. We also note that clause 3 requires the Secretary of State to arrange for the preparation of a report on whether, and if so how, the law ought to be changed to require or permit the registration of pregnancy losses which cannot be registered as still-births under the Births and Deaths Registration Act 1953. Although clause 3 deals with another particularly sensitive subject, it does not confer a Henry VIII power similar to clause 4(4) allowing Ministers to make changes to the law to reflect the report’s recommendations. The Memorandum does not explain this discrepancy.
41. In our view, any amendments to Part 1 of the 2009 Act to give effect to recommendations made in the report published under clause 4(1) should be made by a bill. This would afford Parliament the opportunity to debate the findings of the report and fully to scrutinise the proposed amendments. The nature of the issues to which this provision gives rise argues for greater parliamentary involvement than that provided for by affirmative resolution procedure regulations.
42. For the same reasons that we give in paragraph 28 in relation to clause 2, we regard the unjustified Henry VIII power conferred by clause 4(4) as fundamentally objectionable as a matter of principle.
43. **We therefore recommend the removal of clause 4(4) on the ground that it confers an inappropriate delegation of power.**

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<sup>17</sup> Home Office, [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill Delegated Powers Memorandum](#), paras 37 and 38

## **STALKING PROTECTION BILL**

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

## **ORGAN DONATION (DEEMED CONSENT) BILL: GOVERNMENT RESPONSE**

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45. We considered this Bill in our 43rd Report of this Session.<sup>18</sup> The Government have now responded by way of a letter from Jackie Doyle-Price MP, Parliamentary Under Secretary of State for Mental Health, Inequalities and Suicide Prevention at the Department of Health and Social Care, printed at Appendix 2.

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<sup>18</sup> Delegated Powers and Regulatory Reform Committee, *Organ Donation (Deemed Consent) Bill* (43rd Report, Session 2017–19, HL Paper 259)

## APPENDIX 1: FISHERIES BILL: GOVERNMENT RESPONSE

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**Letter from George Eustice MP, Minister of State at the Department for Environment, Food and Rural Affairs, and Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee.**

The Government is grateful for the report from the Delegated Powers and Regulatory Reform Committee on the Fisheries Bill.

The Committee made two recommendations on clause 22 of the Bill. The Committee recommended that:

- the power for the Secretary of State, by regulations, to make provision for the sale of rights to use English catch quota and English effort quota be preceded by consultation; and that
- the clause makes clear that fishing opportunities would not be sold exclusively on the basis of price.

The Government is pleased to accept these recommendations. We are committed to effective consultation, whether or not it is required in legislation, but we understand the Committee's concern that in relation to clause 22 of the Bill it would provide greater reassurance—for both Parliament and the fishing industry—if a requirement to consult was in law.

In response to the Committee's recommendations, the Government tabled two amendments to the Bill at Commons Committee stage. The first amendment inserted what is now clause 22(5) into the Bill to confirm that a consultation must take place before the regulations are made. Secondly, clause 22(3)(h) was also amended to confirm that regulations could require or permit conditions other than price to be taken into account when deciding who to sell fishing opportunities to under the scheme. The clause now reflects the intentions outlined in paragraph 53 of the Explanatory Notes to the Bill which states that the Government may be able to apply other criteria when assessing bids.

**22 January 2019**

## **APPENDIX 2: ORGAN DONATION (DEEMED CONSENT) BILL: GOVERNMENT RESPONSE**

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### **Letter from Jackie Doyle-Price MP, Parliamentary Under Secretary of State for Mental Health, Inequalities and Suicide Prevention at the Department of Health and Social Care, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee.**

I am grateful for the work of the Committee in examining and reporting on the Organ Donation (Deemed Consent) Bill in its 43rd Report of Session 2017–19 published on 20 December (HL Paper 259).

The Committee found the explanations on the Delegated Powers and Regulatory Reform Committee memorandum to be persuasive as to the reasons for delegating these powers to subordinate legislation. However, the Committee raised a concern that neither the pre-consultation nor the consultation work on a list of proposed novel transplants to be excluded from deemed consent, had been undertaken by the department before the Bill's introduction.

I would like however to re-assure the Committee that the pre-consultation work with NHS Blood and Transplant (NHSBT) and bodies with close interest in the issue has already started. This will enable the department to develop a consultation document which reflects the latest evidence.

The Government amended the Organ Donation (Deemed Consent) Bill in the House of Commons Committee Stage in September 2018. The aim of the amendment was to create a new power for the Secretary of State to make regulations to exclude novel transplants. During the debate, to assist the Committee with its considerations, when introducing the amendment, both Geoffrey Robinson MP, the sponsor of the Bill, and myself as the Minister for Mental Health, Inequalities and Suicide Prevention, cited face and limb transplants as examples of the more controversial transplants which the Government proposed should be excluded from deemed consent. I also outlined plans to consult formally on the proposed list of novel transplants and lay the relevant regulations under an affirmative procedure.

Following subsequent discussions with stakeholders on how the outcome of the consultation on novel transplants will become clear to the public, Lord O'Shaughnessy, the Parliamentary Under Secretary of State for Health, confirmed at the Second Reading debate in the Lords, that there will be a Written Ministerial Statement every time the regulations change.

Since the Commons Committee Stage in October, the Department has appointed the Regional Clinical Lead for Organ Donation in London, to advise on the technical aspects of the further work the department will need to develop for the implementation of the new system. The work on novel transplants to be excluded from the system of deemed consent is now underway.

In addition to NHSBT and its advisory groups, the department has now approached the Faculty of Intensive Care Medicine, the Society of British Neurological Surgeons, the Intensive Care Society, the Human Tissue Authority and the British Transplantation Society to give a view on whether the list of tissues and organs which were excluded from the deemed consent arrangements in Wales are still considered novel and therefore express consent is required instead.

Making sure that the public has all the available information before the new system of deemed consent begins is of our outmost concern. A public awareness campaign to highlight the changes to consent arrangements will take place before the new rules on consent are brought into force. Following the consultation, this campaign will also set out which transplants are considered novel and in respect of which consent to transplantation cannot be deemed. Guidance material explaining all aspects of deemed consent will also be widely available when the provisions are brought into force.

I hope the Committee is assured that we are making progress with the work as quickly as we can.

**28 January 2019**

### **APPENDIX 3: MEMBERS AND DECLARATIONS OF INTERESTS**

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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 29 January 2019, Members declared the following interests in relation to the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill:

Lord Lisvane

*Married to a Church of England priest who solemnises marriages*

#### **Attendance**

The meeting on the 29 January 2019 was attended by Lord Blencathra, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler.