

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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47th Report of Session 2017–19

**Healthcare (International  
Arrangements) Bill**

**Healthcare (International  
Arrangements) Bill: Government  
Response**

**Financial Services (Implementation  
of Legislation) Bill [HL]:  
Government Response**

**Legislative Reform (Horserace  
Betting Levy) Order 2018**

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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*

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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 Seventh Report

## HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

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1. The Healthcare (International Arrangements) Bill had its Second Reading on 5 February 2019. We published an initial report on 15 November 2018 to facilitate consideration of the Bill by Members of Parliament during its passage in the House of Commons.<sup>1</sup> The Parliamentary Under Secretary of State for Innovation at the Department of Health and Social Care, Baroness Blackwood of North Oxford, wrote to us on 30 January 2019 in response to our earlier report. We discuss the Minister’s response, which is published as an Appendix to this report, below.
2. The Government have said that the Bill “is being introduced as a result of the decision to leave the EU and is intended to enable the Government to respond to the widest range of possible outcomes of EU Exit in relation to reciprocal healthcare including the implementation of new reciprocal healthcare agreements”.<sup>2</sup> However, the Bill goes much wider than reciprocal healthcare in relation to EU exit. It is a skeleton Bill allowing the Secretary of State by regulations:
  - (a) to make provision in relation to the exercise of the power to make payments in respect of the cost of all forms of individual healthcare provided by anyone anywhere in the world;<sup>3</sup>
  - (b) to make provision for and in connection with the provision of any such healthcare;<sup>4</sup> and
  - (c) to give effect to healthcare agreements.<sup>5</sup>
3. **We are concerned that the Brexit process has given rise to a series of Bills, of which this is the latest, containing unprecedented powers for Ministers to make law by statutory instrument.** Our concern goes to the heart of the relationship between Parliament and Ministers of the Crown. In our earlier report on this Bill we commented on the extraordinary width of the delegated powers in clause 2.
  - There is no limit to the amount of the payments, who can be funded world-wide or the types of individual healthcare being funded.<sup>6</sup>
  - The regulations made under the Bill can confer functions on, and delegate functions to, anyone anywhere.<sup>7</sup>

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

2 [Explanatory Notes to the Healthcare \(International Arrangement\) Bill](#) [HL Bill 155 (2017–19)-EN], para 2

3 [Healthcare \(International Arrangements\) Bill](#), clause 2(1)(a) [HL Bill 155 (2017–19)]

4 [Healthcare \(International Arrangements\) Bill](#), clause 2(1)(b)

5 [Healthcare \(International Arrangements\) Bill](#), clause 2(1)(c). “Healthcare agreement” is defined in clause 3 to mean agreements between the UK government and foreign governments or international organisations concerning healthcare (a) provided outside the UK and funded by the UK government, or (b) provided in the UK and funded by a country or territory outside the UK.

6 [Healthcare \(International Arrangements\) Bill](#), clause 2(2)(a), (b) and (c)

7 [Healthcare \(International Arrangements\) Bill](#), clause 2(2)(h) and (i)

- The regulations can amend or repeal any Act of Parliament ever passed, for the purpose of conferring functions on people or for giving effect to a healthcare agreement.<sup>8</sup>
  - Although the Bill is being introduced as a result of the decision to leave the EU,<sup>9</sup> the Bill also relates to implementing future healthcare agreements entered with non-EU countries.
  - Under the powers in clause 2(1)(a) and (b) of the Bill, the Secretary of State could fund the entire cost of mental health provision in, say, the state of Arizona as well as the cost of all hip replacements in, say, Australia. If this might appear fanciful, **we assess powers by how they are capable of being used, not by how governments say that they propose to use them.** The fact that the powers could be used in these ways suggests that they are too widely drawn.
  - These powers are subject only to the negative procedure, save where they amend primary legislation.<sup>10</sup>
4. **In our earlier report we took the view that the powers in clause 2(1) had not been adequately justified by the Department and, in the absence of a convincing justification, were inappropriately wide. We thought it particularly unsatisfactory that such powers were subject only to the negative procedure save only where used to amend primary legislation.**
  5. Our conclusions were supported by the Constitutional and Legislative Affairs Committee of the National Assembly for Wales at paragraph 45 of its report, of 22 January 2019, on the Welsh Government’s Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill.<sup>11</sup>
  6. We have considered the Minister’s letter of 30 January 2019 with care and appreciate the thoroughness with which she has responded. We remain, however, unpersuaded by her arguments.
  7. We agree with the Minister that funding powers such as in clause 1 of the Bill are commonly seen in primary legislation. At paragraph 12 of her letter, the Minister says that, having carefully considered our arguments and having looked at the point again, she nonetheless remains of the view that “the payment power at clause 1 is not drafted more widely than is necessary”. It is beyond our remit to comment on clauses not involving delegated powers but we understand the Minister’s point to relate to the delegated power in clause 2(1)(a). **Our concern remains that, as shown in paragraph 3 above, clause 2 read with clause 1 is drafted in far wider terms than are necessary to give effect to the Department’s limited aims.**
  8. At paragraph 5 of her letter, the Minister argues that the delegated power in clause 2 is included “to provide further clarity”, given the current uncertainty as to the exact nature of future arrangements that will be put in place in

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8 [Healthcare \(International Arrangements\) Bill](#), clause 5(3)

9 [Explanatory Notes to the Healthcare \(International Arrangement\) Bill](#) [HL Bill 155 (2017–19)-EN], para 2

10 In which case they must be affirmative: clause 5(5) and (6).

11 National Assembly for Wales Constitutional and Legislative Affairs Committee, [The Welsh Government’s Legislative Consent Memorandum on the Healthcare \(International Arrangements\) Bill](#), 22 January 2019 [accessed 14 February 2019]

respect of healthcare abroad. **This will be welcome when it comes but it is unacceptable to see nothing on the face of this very short Bill to provide any clarity at all in the current climate of uncertainty.** As it is, the devil will be entirely in the detail. The detail will not be disclosed until the regulations are made, which will be after the Bill has been enacted.

9. At paragraphs 8 to 10 of her letter, the Minister refers to funding powers in other contexts (section 153 of the Environmental Protection Act 1990 and sections 12A and 12B of the NHS Act 2006) suggesting, at paragraph 11, that the payment power in the Bill is not unusual in its breadth. She cites the 2006 Act as an example of a regulation-making power (section 12B) supporting a broad payment power (section 12A—direct payments for healthcare), and the 1990 Act as an example of a broad payment power with no such support. The Minister says in paragraph 6 of her letter that the supporting power in clause 2(1)(a) gives the Secretary of State the option, where necessary, to make regulations “to assist Parliament and the general public and give opportunity for more scrutiny in relation to payment arrangements.” **The House may consider that its value in this regard is limited by its breadth and that further constraints and controls are called for. If a power is too wide, it is little reassurance that similarly wide powers exist elsewhere.**
10. The Minister repeatedly refers to the need for “flexibility”,<sup>12</sup> given that reciprocal healthcare arrangements remain subject to negotiation. She says that there must be flexibility as to the meaning of healthcare, as to the persons who can be funded and as to the persons to whom functions can be delegated. The Minister says, at paragraph 19: “This is a forward-looking Bill and so flexibility is key”. **Powers that are too wide are not the more attractive for being part of a “forward-facing” and “forward-looking” Bill.**
11. At paragraph 29, the Minister says again that the Bill is a “forward-facing Bill”, this time to justify taking powers to go beyond replacing current EU arrangements. **Given that post-Brexit reciprocal healthcare arrangements are the Bill’s principal target, the powers in clause 2 to make law governing the provision of healthcare by anyone anywhere in the world could have been more effectively circumscribed.**
12. **The Bill contains a Henry VIII power to amend or repeal any Act of Parliament ever passed, for the purposes mentioned in clause 5(3). The Minister does not give any indication of what primary legislation might in future need to be amended.** At paragraph 20 of her letter, the Minister mentions that the Bill allows for the conferral of functions on healthcare bodies that may be set up in the future. The Minister adds that conferring functions on what are currently non-existent bodies “could involve amending primary legislation”. **The time for conferring functions on new statutory bodies is when the statute creating those bodies is enacted.**
13. The Minister has concerns that, without this Henry VIII power, the Department might not be able to “effectively implement and give effect to detailed healthcare arrangements in the future” (paragraph 22 of her letter). **That may turn out to be so but the power is too broad and the concession of affirmative resolution procedure does not remedy this.**

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12 For example, at paras 13, 14 and 19 of the letter of 30 January 2019.

14. At paragraph 33 of her letter, the Minister says that “the Government does not want to seek powers which are too wide”. **There must be considerable doubt as to how effective this self-denying ordinance has been, given that the delegated powers in clause 2 could hardly have been wider.**
15. Accordingly, our conclusions remain those in our earlier report:
  - (a) **the law-making powers conferred on Ministers in clause 2(1) are inappropriately wide;**
  - (b) **it is particularly unsatisfactory that such powers should be subject only to the negative procedure, save where amending primary legislation.**

## HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL: GOVERNMENT RESPONSE

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16. We considered this Bill in our 39th Report of this Session.<sup>13</sup> The Government have now responded by way of a letter from Baroness Blackwood of North Oxford, Parliamentary Under Secretary of State for Innovation at the Department of Health and Social Care, printed at Appendix 1.

## FINANCIAL SERVICES (IMPLEMENTATION OF LEGISLATION) BILL [HL]: GOVERNMENT RESPONSE

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17. We considered this Bill in our 42nd Report of this Session.<sup>14</sup> The Government have now responded by way of a letter from the Rt Hon. Lord Bates, Lords Spokesperson for HM Treasury, printed at Appendix 2.

## LEGISLATIVE REFORM (HORSE RACE BETTING LEVY) ORDER 2018

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18. We considered this draft Legislative Reform Order in our 38th<sup>15</sup> and 41st<sup>16</sup> Reports of this Session. The Government have now responded by way of a letter from Mims Davies MP, Minister for Sport and Civil Society at the Department for Digital, Culture, Media and Sport, printed at Appendix 3.

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13 Delegated Powers and Regulatory Reform Committee, *Thirty Ninth Report* (39th Report, Session 2017–19, HL Paper 226)

14 Delegated Powers and Regulatory Reform Committee, *Forty Second Report* (42nd Report, Session 2017–19, HL Paper 255)

15 Delegated Powers and Regulatory Reform Committee, *Draft Legislative Reform (Horse Race Betting Levy) Order 2018* (38th Report, Session 2017–19, HL Paper 219)

16 Delegated Powers and Regulatory Reform Committee, *Draft Legislative Reform (Horse Race Betting Levy) Order 2018* (41st Report, Session 2017–19, HL Paper 249)

## APPENDIX 1: HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL: GOVERNMENT RESPONSE

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### Letter from Baroness Blackwood of North Oxford, Parliamentary Under Secretary of State for Innovation at the Department of Health and Social Care, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

Thank you for the report from the Delegated Powers and Regulatory Reform Committee, dated 14 November 2018, on the Healthcare (International Arrangements) Bill (the Bill).

The Government appreciates the Committee's work and rigorous scrutiny of the delegated powers in the Bill and I am pleased to be able to respond to the issues raised and in doing so hope to alleviate the concerns raised by the Committee. Please find the Government's response below.

#### *Clause 2(1)(a): The lack of limits to the amount of payments, who can be funded and the types of healthcare being funded*

1. The Committee's report raises the absence of limits to the scope of the regulations that may be made under clause 2(1)(a), and this relates to the breadth and nature of the funding power in clause 1.
2. This is an important point and funding is clearly an issue Parliament will and should be interested in. This is one of the reasons the Department wanted to include a clear funding power capable of being supported by regulations as needed in this Bill. Of course, funding powers are commonly seen in primary legislation. The Public Accounts Committee Concordat 1932 established the principle that where possible, the authority for Government expenditure should flow from a specific Act of Parliament, rather than relying solely on the authority of the Supply and Appropriation Acts.
3. Clause 1 provides the Secretary of State with the power to make payments, and arrange for payments to be made, in respect of the cost of healthcare provided outside the United Kingdom. This is not a delegated power and it is usual for Acts of Parliament to contain general spending powers on the face of the Act. These spending powers are often widely drafted and frequently not limited in the amount of payments which can be made or the geographical location of such payees.
4. Statutory payment powers tend to operate without the need for delegated legislation; funding powers tend to be standalone primary powers. We have taken the approach that the exercise of clause 1 may be the subject of delegated legislation made under clause 2(1)(a) in recognition of the fact that payment arrangements can be complex under reciprocal healthcare arrangements. For example, they may involve off-set arrangements, and the detail of those arrangements would be appropriately included in regulations. This also provides greater transparency of the payment system. However, generally funding powers are less commonly seen as the subject of secondary legislation, and this may perhaps be what underlies some of the Committee's concerns.
5. EU Exit means there is currently uncertainty as to the exact nature of future arrangements that will be put in place in respect of healthcare abroad. We

have included the regulation-making power in clause 2(1)(a) in order to provide further clarity. This is in addition to the general payment power in clause 1.

6. While it will not always be necessary to make such regulations, the power in clause 2(1)(a) gives the Secretary of State the ability to make regulations to set out details concerning how payments may be made, which may include administrative and procedural aspects of payment arrangements. This is to assist Parliament and the general public and give opportunity for more scrutiny in relation to payment arrangements.
7. Several issues set out in the Committee's report relate to concerns around the general payment power in clause 1. Therefore, I wanted to go back to consider other funding powers and provide some more examples which may assist the Committee as they demonstrate that it is common for general payment powers to be wide in scope (see examples below). Partly, this is because the spending of public money is closely monitored in ways which are not set out in the payment power provisions of a Bill/Act. For example, there is a need for all departmental expenditure to have Treasury approval, for all relevant expenditure to be authorised by the annual Supply process (which involves Parliament's consideration of the Supply Estimates) and Government departments must prepare annual resource accounts which are audited by the Comptroller and Auditor General.
8. There are a good number of examples of wide payment powers on the face of primary legislation. Section 153 of the Environmental Protection Act 1990, for example, provides that the Secretary of State may give financial assistance to, or for the purposes of, a list of programmes or bodies whose purpose relate to the protection, improvement or better understanding of the environment. The list includes the United Nations Environment Programme, the Convention on International Trade in Endangered Species of Wild Fauna, the National Forest Company, the International Sustainable Development Fund and "any national or international architectural award scheme or competition scheme relating to the protection, improvement or better understanding of the environment". There are no limits on the value of payments which can be made on the face of the Act and financial assistance may be given in respect of particular activities or generally in respect of all or some part of the activities carried on or supported by the recipient. There are no delegated powers provided for in relation to this expenditure. This general power has a wide scope (and relates to international recipients) and does not provide for further specific Parliament scrutiny. In our experience, this is often the nature of general spending powers.
9. To give you two health related examples, section 12A (Direct payments for health care) of the NHS Act 2006 also provides a payment power. This allows for direct payments to a patient (or to a person nominated by the patient) in respect of securing the provision to a patient of anything that the Secretary of State or local authority has a duty or power to provide or arrange under section 2 A or 28 or Schedule 1 (which generally relates to the protection of public health) and anything which NHS England or a clinical commissioning group may or must arrange for the provision of under the NHS Act or any other enactment. The payments can therefore relate to a wide range of different healthcare provision and the power does not contain any financial limits on the payments which can be made. There are no

statutory limits on whom a person may nominate for receiving the payments on their behalf.

10. Section 12B (Regulations about direct payments) of NHS Act 2006 is an example of where regulations are also provided for in relation to a payment power. Section 12B provides that the Secretary of State may make regulations about direct payments. This supplements the general payment power in a similar way to clause 2(1)(a) in this Bill. The regulation-making power at section 12B does not have any financial limits imposed, the power does not curtail the persons a patient may nominate to receive payment, nor does it seek to limit the services which may be paid for beyond the wide scope set out under the general power. Regulations made under section 12B are subject to the negative procedure.
11. These examples are, I suggest, useful to demonstrate that the payment power in the Bill is not unusual when general funding powers are considered.
12. The Government has carefully considered the Committee's comments in relation to the absence of limits on the face of the Bill and welcomes this challenge on such an important issue. Having looked at this point again, and taken on board the concerns of the Committee, the Government respectfully remains of the view that the payment power at clause 1 is not drafted more widely than is necessary and nor is it unusual that exercises of the power are not expressly limited on the face of the Bill by financial amounts or territorial scope as to where the payments can be made.
13. Healthcare is defined in the Bill and flexibility is necessary to ensure that the Bill powers are able to give effect to reciprocal healthcare arrangements, the content of which remain by their nature subject to negotiation. Healthcare arrangements and reciprocal healthcare agreements may provide that only certain types of healthcare will be funded. If so, any underlying implementing regulations made under clause 2(1)(b) or (c) must be able to provide for that. Each agreement or specific healthcare arrangement may be different, and it is the Government's view that it would not be appropriate to indirectly limit the Government's negotiating position by placing limitations on the type of healthcare that may be covered by any agreement, on the face of the Bill.
14. It is also necessary to include flexibility as to who the payments can be made to. This is not unusual with payment powers, as the purpose rather than the person is usually the important restriction and this is the key point for this Bill. The Bill may involve payments being made to individuals, healthcare providers or Governments of other countries. This is dependent on the healthcare arrangements and agreements which are entered into. This level of flexibility as to payee will ensure the Bill powers can be used to implement a variety of healthcare arrangements which may be negotiated in the future with other countries.
15. I hope the above gives some further explanation and context and helps to clarify the Government's position. I am keen to reassure the Committee insofar as its concerns were directed to the extent and nature of the spending power which may be given effect by the regulations, that this Bill does not go further than is necessary or appropriate.

*Clause 2: The regulations can confer functions on anyone anywhere and can delegate functions to anyone anywhere.*

16. The Committee has raised concerns about the ability to confer functions on bodies outside of the UK for the purposes of giving effect to a healthcare agreement or in connection with the provision of healthcare outside of the UK. I want to give some further explanation of the thinking behind this particular drafting, as I appreciate the concerns raised.
17. Aspects of a future reciprocal healthcare agreement may require the conferral of functions via regulations. For example, it may be necessary to confer a function on another body in relation to facilitating treatment abroad as this is likely to require local medical administration or authorisation. Functions also need to be delegated to other bodies to allow for administrative processes to support healthcare arrangements abroad to be carried out. We do this now, in relation to the European Healthcare Insurance Card (EHIC) Scheme, which the NHS Business Services Authority (NHS BSA) administers on behalf of the Department.
18. In practice, what this looks like currently is, if a UK national injures themselves on a holiday in France, they present their EHIC at the hospital or general practitioner and receive the necessary treatment. The hospital would then raise an invoice for the treatment with the French liaison body. The French liaison body would submit a claim for the cost of that treatment to NHS BSA based on receipt of the invoice from the hospital. Once the UK is satisfied that the claim is accurate and valid, we would release the payment to France.
19. The conferral of functions is therefore an important way to ensure arrangements work on a practical level. We need to ensure operationally we can make arrangements work efficiently and it is important that the Bill allows us to do this. This is a forward-looking Bill and so flexibility is key. While the Government appreciates the current uncertainty around future arrangements, once healthcare arrangements are negotiated, we will be in the best position to direct and confer or delegate functions as necessary on the appropriate bodies to administer arrangements. This will allow for efficient operation of such arrangements.

*Clause 2: The regulations can amend or repeal any Act of Parliament ever passed, for the purpose of conferring functions on people or for giving effect to a healthcare agreement.*

20. The Department notes the concerns of the Committee. The powers in this Bill are intended to provide the Government with both the flexibility and the capacity to implement detailed and complex arrangements concerning healthcare abroad. This may involve conferring functions on healthcare bodies which may, for example be set up in the future. This could involve amending primary legislation.
21. It is recognised that more usually with consequential powers to make amendments to primary legislation, such as this, they are either limited to amendments to primary legislation that is not more recent/older than the primary legislation itself (section 180 of the Policing and Crime Act is an example of this) or there is an accompanying schedule with consequential amendments that have already been identified.

22. For this Bill, however, the Department has concerns that placing express limitations on the consequential power could prevent it from being used to effectively implement and give effect to detailed healthcare agreements in the future. To help navigate this concern, any regulations which make consequential amendments to primary legislation will be subject to the affirmative procedure and therefore provide Parliament with an opportunity to debate those regulations. This provides Parliament important oversight over future regulations which make consequential amendments to primary legislation.
23. I hope this provides further explanation of why this provision is necessary to ensure the effective administration of future reciprocal healthcare arrangements.

*Clause 2: The regulations go wider than essential matters and are not merely about giving effect to healthcare agreements.*

24. The Committee has raised concerns related to the breadth of the regulation making powers and that they can be used to cover provision of healthcare outside of a healthcare agreement. I am grateful the Committee has raised this point so I can provide some further clarity on this point.
25. The provision of healthcare abroad can be complex and can differ from country to country, and from scheme to scheme. For example, the current arrangements the UK has in place with the EU for facilitating access to planned treatment through the S2 route are different to the arrangements for the EHIC Scheme. That is, the S2 route requires an element of pre-approval for medically necessary conditions, whereas accessing healthcare through an EHIC is for emergency and needs arising concerns and does not require the UK to preauthorise treatment. It is therefore important to have in place the appropriate legislative mechanisms to implement different reciprocal healthcare schemes and healthcare access arrangements.
26. The range and scope of any healthcare agreements that the UK negotiates and enters into would be restricted if a key mechanism for implementation, which this Bill provides, is itself limited. This could have the unintended effect of limiting a person's access to healthcare where their circumstances do not align neatly. People's circumstances differ considerably and it is necessary to provide a legislative framework that is robust enough to effectively support people to access healthcare.
27. As the report acknowledges, the regulation making powers are wider than giving effect to healthcare agreements. This is intentional as the Government feels it is appropriate to ensure we can continue to support UK nationals to access healthcare abroad. In any scenario, it is of course our ambition to secure a future deal with the EU on this matter. Should this not be possible, we would look to agree future bilateral agreements with EU member states. The Bill is intended to support this endeavour, and also provides the Government with the flexibility to make independent arrangements to pay for healthcare should this be necessary. This is something the Government might explore using in exceptional cases to secure healthcare for certain groups of people.
28. The Government does not want to unintentionally limit access to healthcare and considers the power at clause 2 is necessary to allow the Government to implement bilateral or multilateral reciprocal healthcare agreements or act unilaterally for exceptional cases.

*Clause 2: The Bill applies to countries throughout the world, not just the EU*

29. The Committee has raised concerns that the Bill has a broader international focus than just the EU. This is a very relevant point and something which has been discussed in debates as the Bill has passed through the House of Commons and been received positively by MPs. The initial use of the Bill power is intended to deal with issues arising from the UK leaving the EU and the potential change to EU reciprocal healthcare arrangements as a result of that. However, while this Bill is being brought forward as result of the UK's exit from the EU, it is not only aimed at exiting the EU. It is a forward-facing Bill.
30. The UK currently has a number of existing reciprocal healthcare arrangements with countries outside the EU. These are less complex arrangements than those that currently exist with the EU and often money and data does not flow between States. The Government does not want to restrict itself from being able to strengthen these agreements with non-EU countries should we wish to in the future. Once the UK exits the EU it will also be important for the Government to consider the UK on a global basis and therefore use the powers provided in the Bill to implement international reciprocal healthcare agreements which may be entered into with nonEU countries as part of future global health strategy. This is an important policy aim of the Bill.
31. It is the Government's policy intention to take this opportunity to include powers which can be used in the context of EU Exit, and to also put in place the legislative framework capable of supporting the implementation of comprehensive reciprocal healthcare arrangements with countries both within and outside the EU and to enable possible future partnerships, which the UK chooses to enter into.

*Clause 2: The scope of the regulations made under clause 2—relating to the provision and funding of healthcare throughout the world—is “exceedingly wide”*

32. The Committee has raised concerns about the scope of the regulations and the ability of the Bill to provide for funding healthcare throughout the world. Again, I appreciate the Committee's comments and understand the concerns and so would like to explain the rationale on this approach.
33. The Government does not want to seek powers which are too wide and so has carefully considered this matter. The scope of the regulations is limited in remit to the provision and funding of healthcare abroad. I would like to take this opportunity to assuage concerns of the Committee and explain this drafting approach has been thoroughly considered. This Bill is firmly focused on how we effectively support people to access healthcare abroad. Leaving the EU is a new venture for us all and it is the Government's intention to ensure that in this process we provide a robust legislative foundation that ensures flexibility to respond quickly and effectively to all scenarios, so that people do not fall unnecessarily through the cracks, but also so we can plan for the future.
34. Further to this, once the UK exits the EU it will be important for the Government to consider whether implementing international reciprocal healthcare agreements with non-EU countries is beneficial to the country. Without knowing the future international arrangements which are yet to be negotiated, it is vital that the Government has the flexibility and capacity to implement future comprehensive agreements, should they be negotiated.

*Clause 2 and Clause 5: Regulations only subject to the negative procedure, save where they amend primary legislation*

35. The Committee has raised concerns about the Parliamentary scrutiny procedure for regulations made under the Bill. This issue is a very important consideration when drafting any regulation making power and so I would like to take this opportunity to further explain our suggested approach.
36. Regulations that contain provisions that make modification to primary legislation will be subject to the affirmative resolution procedure and Parliament will therefore have an opportunity to debate them. Regulations made under this Bill that do not contain provisions that amend, repeal or revoke primary legislation are to be subject to the negative resolution procedure.
37. The remit of the Bill's regulation-making powers is focused. Regulations under clause 2(1) can only be used to give effect to healthcare agreements, make provision for and in connection with healthcare provided overseas or to make payments or arrangements for funding healthcare abroad. Where the UK negotiates a comprehensive international healthcare agreement—whether multilaterally with the EU or bilaterally with EU Member States—most of the important elements setting out the terms of that agreement would be included in the agreement itself. As agreements are in the process of being negotiated, the Government would be willing to provide an update on the progress of negotiations to a Parliamentary Committee, for example the Health Select Committee. Regulations giving effect to such an agreement would likely focus on the procedural, administrative and technical details, such as the types of documents or forms to be used to administer the reciprocal healthcare arrangements.
38. Further to this, in a scenario where a comprehensive healthcare agreement is being implemented by the regulations made under clause 2(1) (c), that agreement would be subject to Parliamentary scrutiny under the ratification procedure in section 20 of the Constitutional Reform and Governance Act 2010. This statutory process provides an opportunity for Parliamentary scrutiny in respect of the substance of healthcare agreements being given effect to in regulations made under the Bill. Under this process either House can resolve that the agreement should not be ratified.
39. The Government fully understands and appreciates the necessity for Parliamentary scrutiny and has given careful consideration of the likely substance of the legislation and the concept of speed and flexibility which delegated legislation represents.

*Government Response*

40. Reciprocal healthcare arrangements enjoy broad support from both sides of the House and indeed the wider UK public. I was heartened to see the evidence to the Public Bill Committee on 27 November 2018, where each of the witnesses spoke of how well the current arrangements with the EU work. The Academy of Medical Royal Colleges and the British Medical Association both provided evidence that the current arrangements are simple, well understood, easy to operate and offer appropriate coverage to healthcare. Moreover, Kidney Care UK provided valuable evidence of the importance of these arrangements in providing people, especially people with long-term or chronic health conditions, with access to travel and in turn greater life

opportunities. It is for these reasons the Government intends to work with the EU and Member States to provide for the broad continuation of these current arrangements.

41. In considering the Committee's comments and concerns, the Government has heard the need for greater transparency in our administration and implementation of reciprocal healthcare arrangements. This seems an appropriate way to alleviate concerns why still ensuring the legislation works for the scenarios it is needed in. Consequently, the Government is committing to issue an annual written ministerial statement on the operation of reciprocal healthcare arrangements. This statement will be published as soon as is practicable after the end of each financial year to allow for accurate financial reporting. This statement could include (but not limited to):
  - **Information on the expenditure and income of healthcare provision overseas as a whole.** This would include aggregated expenditure/ income for the annual year, as well as country by country sum of expenditure/ income. The aggregated expenditure figure would include any unilateral spending on exceptional cases.
  - **An update on the operation of arrangements.** This statement could identify areas of successful operation or where arrangements are being improved to promote efficiency.
  - **The strategic direction of reciprocal healthcare arrangements.** This would be a statement on the future priorities for the current operation or a statement of where the UK is engaging with other countries to establish new arrangements.
42. The Department is grateful to the Committee for its comments and has revised the Delegated Powers Memorandum to provide further detail on the intended uses of the powers in the Bill.
43. I thank the Committee for their consideration and for the important points the report has raised. I look forward working constructively with the Committee on the issues they have raised as the Bill progresses through the House of Lords.

**30 January 2019**

## APPENDIX 2: FINANCIAL SERVICES (IMPLEMENTATION OF LEGISLATION) BILL [HL]: GOVERNMENT RESPONSE

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### Letter from the Rt Hon. Lord Bates, Lords Spokesperson for HM Treasury, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

I am grateful to the Delegated Powers and Regulatory Reform Committee for its report of 18 December on the Financial Services (Implementation of Legislation) Bill. The Government has considered carefully the Committee's conclusions and recommendations and our response to each of these is set out below.

The Committee firstly noted that, while section 20(1) of the EUWA defines exit day as 29 March 2019 at 11 pm, section 20(4) allows the time of exit day to be changed if the EU Treaties continue to apply to the UK after 29 March 2019 because a withdrawal agreement has been concluded. The Committee therefore recommended that the provisions fixing the period when the powers under clause 1 may be exercised, and the provisions governing reporting, should be consistent. The Government accepts this recommendation and ensured that, in amendments tabled ahead of Report stage to bolster the Bill's reporting requirements, the drafting is consistent.

Secondly, the Committee considered that the power to make adjustments was inappropriate in so far as it relates to EU legislation that has already been adopted, and recommended that the power should in that case be limited to a power to remedy deficiencies arising from the UK's withdrawal from the EU. The Government understands the concerns expressed by the Committee, and raised by peers in debate, and accepts the principle that this is agreed law that has already received UK approval at EU level. The Government therefore tabled an amendment ahead of Report stage to ensure that the power to make any changes will be strictly limited to the fixing of deficiencies, following the model set in the EU (Withdrawal) Act.

Finally, the Committee recommended in its report that specific provisions should only be identified in clause 1 (2) if those provisions are necessarily going to be implemented in UK law in full. The Government, after careful consideration, is unable to accept this recommendation. While we are broadly content with the relevant files in clause 1 of the Bill, which have already been agreed at EU level, we cannot know the full context facing the financial services industry in a no deal scenario. Our priority will be to protect the UK industry in all circumstances—it will therefore be important that we should therefore confirm the intention closer to the time to implement these files. That is why, in the absence of the power to adjust these files, the Government requires the discretion to implement them. Our decision on whether we implement them in a no-deal context will, of course, be supported by full engagement with industry and Parliament.

I would like once again to thank the Committee for its work in considering the Bill.

**5 February 2019**

### **APPENDIX 3: LEGISLATIVE REFORM (HORSERACE BETTING LEVY) ORDER 2018**

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#### **Letter from Mims Davies MP, Minister for Sport and Civil Society at the Department for Digital, Culture, Media and Sport, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee**

I am writing to confirm that the Government has decided not to proceed with the draft Legislative Reform (Horserace Betting Levy) Order 2018.

The draft Order had intended to reform the administration of the Horserace Betting Levy by abolishing the Horserace Betting Levy Board (HBLB) and transferring its functions to the Gambling Commission and the racing industry.

The Government has considered the points raised in the committee's report published on Friday 7th December in reaching this view. The Government will continue to work with the Levy Board and the racing industry to maximise the benefits of the Levy, which was reformed in April 2017, to ensure that it continues to deliver for the sector.

I appreciate the importance of the Delegated Powers and Regulatory Reform Committee's (Lords) in Parliamentary procedure and would like to thank its members for providing scrutiny on our proposals.

**29 January 2019**

## **APPENDIX 4: 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 13 February 2019, Members declared no interests.

### **Attendance**

The meeting on the 13 February 2019 was attended by Baroness Andrews, Lord Blencathra, Lord Jones, Lord Lisvane, Lord Rowlands and Lord Thomas of Gresford