

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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50th Report of Session 2017–19

**Healthcare (International Arrangements)  
Bill (changed to Healthcare (European  
Economic Area and Switzerland  
Arrangements) Bill): Government Response**

**Civil Partnerships, Marriages and Deaths  
(Registration etc): Amendments: Response**

**Draft Harrogate Stray Act 1985 (UCI Road  
World Championships) Order 2019**

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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](#)

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### *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 [hlddelegatedpowers@parliament.uk](mailto:hlddelegatedpowers@parliament.uk).

### *Historical Note*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

# Fiftieth Report

## HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL (CHANGED TO HEALTHCARE (EUROPEAN ECONOMIC AREA AND SWITZERLAND ARRANGEMENTS) BILL): GOVERNMENT RESPONSE

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1. We considered this Bill in our 47th Report of this Session.<sup>1</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.

## CIVIL PARTNERSHIPS, MARRIAGES AND DEATHS (REGISTRATION ETC): AMENDMENTS: RESPONSE

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2. We considered the Amendments to this Private Member's Bill in our 48th Report of this Session.<sup>2</sup> Baroness Hodgson of Abinger, the sponsor for the Bill, has now responded by way of a letter printed at Appendix 2.

## DRAFT HARROGATE STRAY ACT 1985 (UCI ROAD WORLD CHAMPIONSHIPS) ORDER 2019

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### Orders under the Localism Act 2011

3. This draft Order was laid on 13 March 2019 by the Ministry of Housing, Communities and Local Government (MHCLG), with an Explanatory Document (ED). It is proposed to be made under section 5 of the Localism Act 2011 (“the 2011 Act”) which allows the Secretary of State to amend, repeal, revoke or disapply a statutory provision which he or she thinks prevents or restricts a local authority from exercising the general power of competence provided for under section 1 of the 2011 Act. MHCLG has proposed that the negative resolution procedure should apply.
4. The purpose of the draft Order is to disapply provisions of the Harrogate Stray Act 1985 (“the 1985 Act”), a private Act, and related byelaws. It will be the third Localism Order to be made under the 2011 Act. The two previous Localism Orders also related to the 1985 Act: the Draft Harrogate Stray Act 1985 (Tour de France) Order 2014 and the Draft Harrogate Stray Act 1985 (Tour de Yorkshire) Order 2016.<sup>3</sup> Both were subject to the negative resolution procedure.
5. We note in passing that, according to the ED, the Council “has resolved unanimously not to request any further temporary Orders to disapply provisions in the 1985 Act” but will, in future, manage events within the provisions of the 1985 Act, and that the Duchy of Lancaster, which owns the

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1 Delegated Powers and Regulatory Reform Committee, *Forty Seventh Report* (47th Report, Session 2017–19, HL Paper 289)

2 Delegated Powers and Regulatory Reform Committee, *Forty Eighth Report* (48th Report, Session 2017–19, HL Paper 295)

3 See Delegated Powers and Regulatory Reform Committee, *Twenty Third Report* (23rd Report, Session 2013–14, HL Paper 156) and Delegated Powers and Regulatory Reform Committee, *Ninth Report*, (9th Report, Session 2016–17, HL Paper 79).

Harrogate Stray, has stated that this will be the last time it will support an application for the temporary suspension of 1985 Act.<sup>4</sup>

### **Role of the Minister and the Committee**

6. Section 7 of the 2011 Act sets out the parliamentary procedure for a draft Order under the Act. In particular, the provision requires the Secretary of State to provide an ED setting out the way in which he or she considers the Order meets conditions set out in section 6(2), namely that:
  - (a) the effect of the provision is proportionate to the policy objective intended to be secured by the provision;
  - (b) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
  - (c) the provision does not remove any necessary protection;
  - (d) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
  - (e) the provision is not of constitutional significance.
7. Before making an Order, the Secretary of State must undertake a consultation exercise in accordance with section 5(7) of the 2011 Act.
8. When scrutinising draft Orders, the Committee must satisfy itself that a consultation exercise has been undertaken in accordance with the Act and that the section 6(2) conditions have been met. If satisfied, the Committee must further consider whether the parliamentary procedure recommended by the Secretary of State is appropriate.

### **Overview of the proposal**

9. The Union Cycliste Internationale (UCI) Road World Championships (“the Championships”) are, according to the ED, “an annual multiple day event, described as the pinnacle event in the international road cycling calendar”.<sup>5</sup> A formal bid to host the Championships was submitted in August 2016 and the UCI formally awarded the Championships to Yorkshire in October 2016. The Championships are proposed to take place during a nine-day period from 21 to 29 September 2019.
10. Harrogate Borough Council (“the Council”) intends to use part of the Harrogate Stray to host the Championships and anticipates that up to 17.05 hectares of the (80 hectares) Stray will need to be sectioned off for a period of 26 days from 9 September to 4 October 2019.
11. The Council considers that parts of the 1985 Act and related byelaws would prevent or restrict it from exercising the general power of competence in hosting the Championships. The Council has, therefore, applied to the Secretary of State to use powers conferred by section 5 of the 2011 Act to make an order temporarily to disapply restrictive provisions of the 1985 Act and related byelaws. That is the purpose of the draft Order.

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<sup>4</sup> Ministry of Housing, Communities and Local Government, [draft Harrogate Stray Act 1985 \(UCI Road World Championships\) Order 2019 Explanatory Document](#), March 2019, paras 4.10–4.11

<sup>5</sup> *Ibid.*, para 2.1

### Consultation

12. A consultation exercise was held during an eight-week period from 22 November 2018 to 17 January 2019. 1259 representations were received. The ED states that, overall, the majority of representations supported the proposal: 74% strongly agreed or agreed that Harrogate should be enabled to host the Championships and 25% were against.<sup>6</sup> Some respondents, including the Stray Defence Association, expressed concern about the timing of the consultation, arguing that it should have been part of the Council's bidding process for the Championships. **Whilst we agree that the requirements under the 2011 Act in relation to the consultation exercise have been met, it would, in our view, have been preferable for the consultation to have been carried out earlier in the process.**

### Section 6(2) conditions

13. **We consider that the Department has justified its statement that the draft Order meets the section 6(2) conditions, and that the draft Order is therefore appropriate for the Localism Act 2011 procedure.**

### Parliamentary procedure

14. The Committee's report on "Post-Legislative Assessment of the Legislative and Regulatory Reform Act 2006"<sup>7</sup> stated that "a principal consideration for the DPRRC is whether the overall character and significance of the provision to be made is such that the House might, in the Committee's view, expect to debate it as a matter of course, as opposed merely to have the opportunity to resolve that it should not be made". These comments were directed at Orders under the 2006 Act but they apply equally to Orders made under the 2011 Act. Applying this test and bearing in mind the Secretary of State's reasons for his recommendation as set out in the ED,<sup>8</sup> **we are content that the negative resolution procedure is appropriate in this case.**

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6 *Ibid.*, para 3.13

7 Delegated Powers and Regulatory Reform Committee, *Post-Legislative Assessment of the Legislative and Regulatory Reform Act 2006* (20th Report, Session 2014–15, HL Paper 132)

8 Ministry of Housing, Communities and Local Government, *draft Harrogate Stray Act 1985 (UCI Road World Championships) Order 2019 Explanatory Document*, March 2019, paras 4.43–4.46

## APPENDIX 1: HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL (CHANGED TO HEALTHCARE (EUROPEAN ECONOMIC AREA AND SWITZERLAND 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 February 2018, on the Healthcare (International Arrangements) Bill.

The Government takes the concerns raised by this Committee seriously and I have reviewed these carefully alongside the views of the House. The Government has tabled a number of amendments to the Bill ahead of Report stage on the 12 March:

1. Firstly, there has been much debate since its introduction on the scope of the delegated powers in the Bill and their application on a global scale. The Government has listened very carefully to these legitimate concerns and has concluded that the regulation making powers used to implement unilateral healthcare schemes (ie arrangements outside of an international healthcare agreement) should be time-limited. The amendment tabled by the Government is to **sunset the regulation-making powers in clause 2(1)(a) and clause 2(1)(b) so that they are only exercisable for a five-year period after the UK leaves the EU.**
2. The purpose of this amendment is to significantly curtail the scope of the delegated powers in the Bill and make it clear that the wider regulation making powers to deal with EU exit are for immediate rather than long-term use. The effect of this amendment is to limit the delegated powers, and therefore limit the scope of what can be done under the Bill around the world.
3. It is important to note that current reciprocal healthcare agreements are not limited to the EU. These agreements are less complex, and post Exit we may want to strengthen these to ensure that we are delivering important opportunities for UK nationals abroad. This is key to delivering greater security and certainty for UK nationals post-exit, and the powers in the Bill enable us to do that.
4. For example, regulations under clause 2(1)(c), would allow us to give effect to future complex healthcare agreements with other countries - a purely implementing mechanism. The statutory framework for ratification of such binding agreements or treaties is provided for via the Constitutional Reform and Governance Act 2010 (CRaG). The Bill does not change this, and implementing regulations would be subject to their own Parliamentary scrutiny process.
5. This amendment constrains the delegated powers under the Bill in a direct response to the issues that the House has raised both on the breadth and

scope of the Bill and confirms that these powers would only be used in exceptional circumstance of EU Exit.

6. In addition, the Government has tabled an amendment to limit the operation of regulations made under clause 2(1), so that if exercised to confer functions, they can only do so to a public authority.
7. I have noted the concerns raised by the Committee on the nature of conferring or delegating functions through the regulation-making powers in clause 2. Indeed, the body which we envisage needing to confer functions to in the future and whom we already work closely with to deliver current reciprocal healthcare agreements is the NHS Business Services Authority. I hope that this amendment puts beyond doubt the Government's position that there is not and never has been any intention to confer functions on private bodies.
8. The Government is committed to financial transparency and opportunities for Parliament to scrutinise spending. We have therefore decided to go beyond the commitment that I made in my letter to you on 30 January to issue an annual written ministerial statement on the operation of reciprocal healthcare arrangements, to insert a statutory duty to issue a report on payments made under the Bill, in each financial year after exit day.
9. This would enable Parliament to have clear and readily accessible details of the public spending on healthcare overseas that is funded under the Bill and the opportunity to scrutinise.
10. The Government has listened very carefully to the Committee's concerns on the inclusion of a consequential Henry VIII power, which has also been the subject of robust debate. We considered it was appropriate to have flexibility to amend different types of legislation, including primary legislation on a limited basis, so that we can operate reciprocal healthcare arrangements domestically in the most coherent way. Looking at past experience, we are aware that when we have implemented international healthcare arrangements we have made consequential amendments to primary legislation. For example, when we implemented the EU Cross-Border Healthcare Directive in 2013, we inserted discrete new sections into the National Health Service Act 2006. Given the general uncertainty of EU exit scenarios we are not able to categorically rule out the possibility of needing to make consequential changes to primary legislation.
11. I appreciate, however, the views of the House and the Committees and I support their recommendation that it would be appropriate to remove the powers in the Bill to make regulations containing consequential amendments to primary legislation. I hope that this alleviates any fears that we are taking powers which are not necessary in this Bill.
12. The Government has tabled an amendment in relation to data processing. Clause 4(6) sets out a list of persons who are authorised to process data for the purposes set out in the Bill, namely to facilitate reciprocal healthcare, whether as part of an agreement with the EU or with, individual countries, or in connection with independent arrangements.
13. The delegated power at clause 4(6)(e) enables the Secretary of State to make regulations to add to the list of persons who can process data for the purposes of the Bill. The list can only be extended via regulations. The

tabled amendment provides that regulations which add to the list of who is an “authorised person” are made subject to the affirmative procedure.

14. Parliamentarians have rightly demonstrated that data protection is a critical issue and the Government shares this important concern. This amendment therefore facilitates greater parliamentary scrutiny on those persons authorised to process data, while equally ensuring that the Government has the necessary flexibility to guarantee that future agreements are administered in the most efficient way possible.
15. I am also pleased to confirm to you and your Committee that the Welsh Government has begun its legislative consent process; demonstrating the close working relationship between the Department and the Devolved Administrations (DAs) throughout passage of the Bill. The Scottish Parliament granted a legislative consent motion to the Bill on 16 January and we have had positive and productive engagement with colleagues in the Northern Ireland Department of Health and in the Northern Ireland Office.
16. I would also like to note to the Committee that the Government committed to bring forward a Government amendment placing a statutory duty to consult the Devolved Administrations where regulations under clause 2 of the Bill make provision that would be within the legislative competence of the Devolved Administrations during Committee Stage. This has thus been tabled for Report, demonstrating the Government’s intent to continue deep collaboration with the DAs to deliver reciprocal healthcare agreements that support the whole of the UK.
17. May I reiterate my gratitude to you and the Committee for your continued engagement on the Bill and for the important issues that it has raised. I hope that the Committee is reassured by the Government’s intentions in relation to the powers to the Bill and I look forward to continuing to work with the Committee constructively during the remaining stages of the Bill’s passage.

**8 March 2019**

## APPENDIX 2: CIVIL PARTNERSHIPS, MARRIAGES AND DEATHS (REGISTRATION ETC): AMENDMENTS: RESPONSE

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### Letter from Baroness Hodgson of Abinger to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

I am most grateful to the Committee for its further consideration of the Civil Partnerships, Marriages and Deaths (Registration etc.) Bill in its 48th Report of Session 2017–19.

As the Committee acknowledges, the amended version of clause 2 that I successfully moved at Committee stage on 1 February is significantly more detailed than the previous version. It now gives a much clearer indication of how the relevant delegated powers might be exercised in future.

The Committee raised some concerns about the drafting of the revised clause, which I have addressed in the paragraphs below.

In paragraph 19 of the Report, the Committee queried the Government’s rationale for not using the remedial order process (under section 10 of the Human Rights Act 1998) to extend civil partnerships to opposite-sex couples. The Committee queried, in particular, the reference to the need to make “other changes that might be desirable or which are necessary” to establish a fully-functioning regime. I understand that the Government will need to consider a range of issues in order to bring about a fully-functioning and compliant opposite-sex civil partnership scheme. This includes matters such as future conversion rights which may not be consequential or incidental in nature and so may not fall within the limited scope of the remedial order-making power.

In paragraph 21 of the Report, the Committee restated its view that the principal changes to the Civil Partnership Act 2004 (“the 2004 Act”) should be set out on the face of the Bill, with a more limited power to make changes by regulations. The Committee queried the Government’s rationale for not adopting this approach. Again, changing the Bill in the way the Committee suggests could, I understand, prevent the Government from establishing a fully-functioning and compliant opposite-sex civil partnership regime. This is because the existing legal framework for civil partnerships, as set out in the 2004 Act, was designed only with same-sex couples in mind. Limiting the regulation-making power in clause 2 in the way the Committee suggests could prevent the Government from tackling issues such as religious protections and conversion rights that may go beyond changes that are simply consequential to the extension of eligibility to form a civil partnership.

In paragraph 22 of the Report, the Committee made four further recommendations:

- The Committee recommended that the power conferred by subsection (3) should be replaced by a more limited power which allows only the provisions in subsection (4) to be made by regulations. Since October, when the House of Commons agreed to extend civil partnerships via the Civil Partnerships, Marriages and Deaths (Registration etc.) Bill rather than through the Government’s proposed second session bill, the Government has worked hard to identify what changes might be needed to establish a new regime. I set out in clause 2(4) how the regulation-making power may be used but the Government has not, in the time available, been able to identify every potential issue that the regulations will need to cover. The list of provisions in subsection (4) is not, and is not intended to be, exhaustive.

- The Committee recommended that the consultation requirement in clause 2(6) should be applied to regulations made under subsections (3), (4) and (7), as well as those under subsection (5). I included in my amended clause 2 a duty on the Secretary of State to consult before making regulations on conversion rights as a further safeguard and because this issue will be of considerable interest to some organisations and members of the public. The Government has already announced its intention to consult on other elements of the new opposite-sex civil partnership scheme and including a wider duty to consult on the changes under clause 2 is, I suggest, unnecessary.
- The Committee recommended that clause 2(7) should either be narrowed or removed altogether unless the Government can provide a convincing justification for its inclusion. Subsection (7) makes provision for regulations that protect the ability to act in accordance with religious belief in relation to matters provided for in regulations made under clause 2. It is intended to allow provision for similar protection in relation to opposite-sex civil partnerships to that provided in relation to same-sex marriages and civil partnerships, and which will not be available under existing statutory provision. This includes issues such as whether to host an opposite-sex civil partnership on religious premises, which should remain a decision for an individual religious organisation to take. Again, the 2004 Act provisions were designed with same-sex couples in mind. Some religious organisations may object to hosting opposite-sex civil partnerships, given their belief in the sanctity of marriage. At the same time, they may choose not to solemnize same-sex marriages but may be prepared to host same-sex civil partnerships instead. Subsection (7) is not expressly linked to the extension of civil partnerships to opposite sex couples to ensure that appropriate provision for religious protection associated with conversion rights can be made. It is not designed to allow civil partnership registrars who do not want to conduct civil partnerships on religious grounds to opt out and I am assured that the Government does not intend to use the power in this way. It is worth noting that in 2013, the European Court of Human Rights found that requiring a registrar to conduct civil partnerships against her religious beliefs did not breach ECHR rights.
- Finally, the Committee recommended that no regulations should be made under clause 2 more than three years after Royal Assent. Clause 2(2) requires the Secretary of State to make regulations relating to eligibility for civil partnerships by the end of 2019. The other measures in clause 2 are not subject to a sunset provision as this would tie the hands of future governments to adjust the regime of opposite-sex civil partnerships should, for example, the policy on conversion rights change. The regulations under clause 2 are subject to the affirmative resolution procedure and so any future changes would be subject to parliamentary scrutiny and debate.

**6 March 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 3 April 2019, Members declared no interests.

#### **Attendance**

The meeting on the 3 April 2019 was attended by Baroness Andrews, Lord Blencathra, Lord Jones, Lord Lisvane, Lord Rowlands, Lord Thurlow and Lord Tyler