

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

51st Report of Session 2017–19

**European Union
(Withdrawal) (No.5)
Bill**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and
- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Lord Flight](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

[Lord Rowlands](#)

[Lord Thomas of Gresford](#)

[Lord Thurlow](#)

[Lord Tyler](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is 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.

Fifty First Report

EUROPEAN UNION (WITHDRAWAL) (NO. 5) BILL

1. The European Union (Withdrawal) (No. 5) Bill is a Private Member's Bill which was introduced into the House of Commons on 2 April 2019. It completed all remaining stages the following day, 3 April 2019. The Bill was brought to the House of Lords on 4 April.
2. The function of the Delegated Powers and Regulatory Reform Committee is "to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of power to an inappropriate degree of parliamentary scrutiny". As such this report extends only to clause 2 of this Bill, a clause introduced during committee stage in the House of Commons, which changes the parliamentary procedure for statutory instruments amending exit day from the affirmative to the negative procedure.
3. In the Government's original European Union (Withdrawal) Bill, which became the European Union (Withdrawal) Act 2018 ("the 2018 Act"), exit day was wholly a matter for regulations without any named date on the face of the Bill. The regulations were subject to no parliamentary procedure at all, whether of the negative or affirmative type. The Bill allowed Ministers to decide on exit day and set it out in law without recourse to Parliament. We objected to this, arguing for the affirmative procedure, meaning that both Houses were required to debate the regulations before they could be made. The principal reasons were the political and legal significance of the date that the UK left the EU, and the allied public interest in the matter. The Government accepted our recommendation.
4. The principal justification for clause 2 of this Bill is that it might be necessary to legislate at speed next week to change exit day. The affirmative procedure might cause delays, with the risk that exit day in domestic law might not be aligned with exit day agreed under EU law.
5. There is some force in this argument, but we are not convinced by it on grounds either of principle or pragmatism.
 - The date of the UK's exit from the EU remains a matter of the greatest political and legal significance. It is right that the matter be debated in Parliament before the current date of 12 April is changed in our domestic law.
 - The Government have previously changed exit day from 29 March to 12 April, and they did so by a statutory instrument subject to the affirmative procedure. The Government have the time to do the same again, having afforded Parliament the scrutiny required by the 2018 Act.
 - Negative resolution scrutiny is necessarily scrutiny after the event (that is, after exit day has already been changed in law). Scrutiny after the event is best avoided in a matter as significant as this, not least because the consequences of a successful prayer against the instrument would

lead to the new exit day being legally invalidated (albeit with prospective effect only) perhaps some weeks after it has taken effect.

- Clause 1 of the Bill would, in certain circumstances, give the House of Commons a vote on a proposed exit day at EU level, making it perhaps less pressing for them to have one on the consequential change to UK domestic law made by the relevant statutory instrument. But clause 1 does not apply to the House of Lords, meaning that the House of Lords would be prevented from participating in the process of approving a new exit day at EU level. It is correspondingly more important, therefore, that the House of Lords can scrutinise the relevant statutory instrument before it is made, rather than after the event, again arguing for the affirmative procedure (which is the current position).
6. **For the reasons set out above, we recommend that clause 2 should be removed from the Bill, thereby restoring the affirmative procedure to statutory instruments amending exit day.**

APPENDIX 1: MEMBERS' INTERESTS

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