



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

10th Report of Session 2017–19

**Sanctions and Anti-Money
Laundering Bill [HL]:
Government Response**

**Correspondence: Scrutiny
of delegated legislation
under the European Union
(Withdrawal) 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 are:

Lord Blencathra (Chairman)	Lord Moynihan
Baroness Dean of Thornton-le-Fylde	Lord Rowlands
Lord Flight	Lord Thomas of Gresford
Lord Jones	Lord Thurlow
Lord Lisvane	Lord Tyler

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>. The Register may also be inspected in the Parliamentary Archives.

Publications

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

General Information

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.

Tenth Report

SANCTIONS AND ANTI-MONEY LAUNDERING BILL [HL]: GOVERNMENT RESPONSE

1. We considered this Bill in our 7th Report of this Session.¹ The Government have now made a preliminary response by way of a letter from Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN at the Foreign & Commonwealth Office, printed at Appendix 1.

CORRESPONDENCE: SCRUTINY OF DELEGATED LEGISLATION UNDER THE EUROPEAN UNION (WITHDRAWAL) BILL

2. The House of Commons Procedure Committee is conducting an inquiry into “*Exiting the European Union: scrutiny of delegated legislation*”.² The Committee published an interim report, “*Scrutiny of delegated legislation under the European Union (Withdrawal) Bill: interim report*”, on 6 November 2017.³ In response to this report the Chairman of the Delegated Powers and Regulatory Reform Committee and the Chairman of the Secondary Legislation Scrutiny Committee sent a joint letter to Charles Walker MP OBE, Chairman of the House of Commons Procedure Committee. This letter is printed at Appendix 2.

1 Delegated Powers and Regulatory Reform Committee, (7th Report, Session 2017–19, [HL Paper 38](#))

2 House of Commons Procedure Committee, *Exiting the European Union: scrutiny of delegated legislation inquiry*: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/procedure-committee/inquiries/parliament-2017/exiting-eu-scrutiny-delegated-legislation-17-19/>

3 House of Commons Procedure Committee, *Scrutiny of delegated legislation under the European Union (Withdrawal) Bill: interim report* (1st Report, Session 2017–19, HC 386)

APPENDIX 1: SANCTIONS AND ANTI-MONEY LAUNDERING BILL [HL]: GOVERNMENT RESPONSE

Letter from Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN at the Foreign & Commonwealth Office, to Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

I am grateful to the Committee for its careful consideration of the Sanctions and Anti-Money Laundering Bill. The Committee's report, and the thorough analysis and constructive recommendations contained within it, have shaped discussion of the Bill in the House, including amendments tabled during Committee stage and the statements I have made in response to those amendments on behalf of the Government.

In light of these discussions in the House, the FCO is now consulting with other Departments on the Government's position on a range of issues ahead of the Bill's Report stage. For this reason, and the broader interest at this time in the issue of delegated powers, I think it would be more sensible to provide the Committee with a fuller response in the New Year rather than a partial, interim response now. Therefore I intend to write to you again, ahead of Report stage, giving a substantive response with our proposed amendments addressing some of the matters raised by the Committee. This response should be with you in the week we return from Christmas recess.

I note that some of the issues raised by the Committee were also covered in the separate report on the Bill published by the Constitution Committee. I am sending a response to that Committee today, copied to you. I am also copying this letter to the Rt Hon the Baroness Taylor of Bolton, Chair of the Constitution Committee.

21 December 2017

APPENDIX 2: CORRESPONDENCE: SCRUTINY OF DELEGATED LEGISLATION UNDER THE EUROPEAN UNION (WITHDRAWAL) BILL

Joint letter from Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee, and Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Charles Walker MP OBE, Chairman of the House of Commons Procedure Committee

This is a joint letter from the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC) and the Secondary Legislation Scrutiny Committee (SLSC). As you know from our submissions to your inquiry into the delegated powers in the European Union (Withdrawal) Bill (EUWB), both Committees have a keen interest in the parliamentary scrutiny procedures to be applied to the secondary legislation made under the EUWB and other Brexit-related Acts.

We would like to thank you for sending to us your recent interim report, “Scrutiny of delegated legislation under the European Union (Withdrawal) Bill”. We welcome the continuation of the collaborative approach which you have demonstrated from the outset of your inquiry. We note, and endorse, the sentiment expressed in your Committee’s report that “the bodies of both Houses charged with scrutiny of [instruments laid under the EUWB] will find it beneficial to share information and move in step as far as possible”. Scrutinising the legislation arising from the decision to withdraw from the European Union, effectively and within the timeframe available to us, presents an unprecedented challenge to the scrutiny capacity of the two Houses. We have no doubt that we can meet that challenge but we are under no illusion as to its extent. In these circumstances, it is imperative that the two Houses should, as far as possible, work together in pursuit of a common aim of holding the Government to account in relation to the secondary legislation that will implement the UK’s withdrawal from the European Union.

We welcome the practical recommendations you make in your report. You urge departments and the Cabinet Committee on Parliamentary Business and Legislation to “plan for a steady flow of instruments” and “avoid unnecessary peaks and troughs in its workload”. The SLSC, in its second submission to your Committee, said that the Government should “ensure proper management of the flow of instruments and clustering of associated instruments, offering advance information about the planned flow”. We therefore fully support your proposal for a schedule, published and regularly updated, showing the Government’s intentions with regard to the flow of instruments.

Whilst we recognise that, in the circumstances, a perfectly even flow might be difficult to achieve, we wonder whether the risk of significant peaks as we approach March 2019 could be mitigated to some degree by the Government agreeing to lay before Parliament, sooner rather than later, those instruments which may be regarded as routine and technical, and not dependent on the outcome of the Brexit negotiations.

We welcome your proposal that Explanatory Memoranda (EMs) should include a clear explanation about how an instrument complies with the requirements of the provisions of the EUWB. The SLSC, in its second submission, suggested that the EM template should be expanded to include material to explain what EU-derived legislation was being “domesticated”, by what means and whether the

effect of the resulting domestic legislation was exactly equivalent to the effect of the EU-derived legislation and, if not, why not. We note that you are proposing that requirements in relation to the content of the EMs should be statutory. We question whether this is necessary (or desirable given that it might provide the basis for judicial challenge), and whether the same result could be better achieved by an amendment to the manual, Statutory Instrument Practice, published by The National Archives, which provides the current basis for the format of EMs.

As you know, some delegations of power in the EUWB are expressly subject to the affirmative resolution procedure, and the level of scrutiny applied to all other powers is to be determined by the Minister. The DPRRC, in its report on the EUWB, recommended that, where the Minister had such a choice and had chosen to apply the negative resolution procedure, the relevant regulations should be subject to a sifting mechanism which would enable a committee of either House to recommend that the affirmative procedure should apply. Whilst different in some important respects, the proposals in your report are clearly intended to achieve the same outcome as that intended by the recommendations of the DPRRC: namely, ensuring the effective parliamentary scrutiny of Brexit-related secondary legislation. We believe that your report is a valuable contribution to this important debate. We recognise that your report is an interim report and that you intend to publish a further report setting out your proposals in more detail. Given this, we hope that you might find it helpful if we were to set out some points that have occurred to us in our consideration of your report:

- You recommend that your proposed committee should have a scrutiny reserve. You also state that the committee “would be under an instruction to complete its scrutiny of an instrument within a defined period”. What would happen if, because of raising questions with the relevant department, for example, the committee had not discharged the scrutiny reserve before the end of the defined period?
- We wonder whether a scrutiny reserve in relation to negative instruments could give rise to particular problems. Usually, negative instruments are made and then laid, and come in force at a date specified in the instrument. The scrutiny reserve creates uncertainty about the coming into force date. So, either the coming into force date would have to be expressed as conditional on a supervening event (namely, when the scrutiny reserve had been discharged) or the form of negative instrument used under the EUWB would have to be the highly unusual draft negative instrument.
- We recognise that the following points are matters which the JCSI may well have raised with you and we would not wish to trespass on their area of expertise. However, it seems to us that the relationship between the proposed committee and the Joint Committee on Statutory Instruments (JCSI) is unclear. On the one hand, it is suggested that the new committee should “consider issues raised by the drafting of each instrument” (a JCSI function) and “whether a change proposed was outside the powers authorised by Parliament” (another JCSI function) but, on the other hand, the proposed committee will be required to have regard to JCSI reports. Furthermore, if the proposed committee is to have regard to JCSI reports, we wonder what the implications would be in terms of the reporting deadlines of both the JCSI and the new committee.

- Under your proposal, the Minister must follow the proposed committee's recommendation or explain to the House of Commons why he or she is not doing so. The Minister's explanation would be laid before the House, with no subsequent parliamentary procedure to test whether the Minister had provided a convincing case for rejecting the committee's recommendation. Is there a case for requiring some form of parliamentary procedure in order to hold the Government to account for the quality of their explanation?

We hope that you find this letter of assistance. We are very keen to maintain the collaborative approach which you have so helpfully adopted, and we look forward to further exchanges in the future, particularly in the light of the House of Commons consideration of Schedule 7 to the EUWB and the Government's response to your report.

5 December 2017

APPENDIX 3: MEMBERS 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.