

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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13th Report of Session 2017–19

**Nuclear Safeguards Bill**  
**Age of Criminal Responsibility Bill**  
[HL]  
**Asset Freezing (Compensation) Bill**  
[HL]  
**House of Lords (Hereditary Peers)**  
**(Abolition of By-Elections) Bill [HL]**  
**Modern Slavery (Victim Support)**  
**Bill [HL]**

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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 [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives.

### *Publications*

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### *General Information*

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### *Contacts for the Delegated Powers and Regulatory Reform Committee*

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

# Thirteenth Report

## NUCLEAR SAFEGUARDS BILL

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1. This Brexit-related Bill, which received its Second Reading on 7 February 2018, creates the legal framework for a domestic nuclear safeguards regime to operate in the United Kingdom. This will replace the current legal framework provided principally by the United Kingdom's membership of the European Atomic Energy Community ("Euratom"). Nuclear safeguards arrangements enable the United Kingdom to meet international nuclear safeguards standards and engage in certain international civil nuclear activities, including trade and research and development.
2. The explanatory notes for the Bill make clear that nuclear safeguards primarily involve reporting and verification processes by which the United Kingdom demonstrates to the international community that civil nuclear material is not diverted into military or weapons programmes. Nuclear safeguards are distinct from nuclear safety (the prevention of nuclear accidents) and nuclear security (physical protection measures), which are the subject of independent regulatory provisions under the Energy Act 2013 ("the 2013 Act").
3. The Bill redefines the "nuclear safeguards purposes" of the Office for Nuclear Regulation ("ONR"), the United Kingdom's nuclear regulator. Those purposes are currently defined in the 2013 Act by reference to Euratom and existing agreements with the International Atomic Energy Agency ("IAEA") which also depend on membership of Euratom. The proposed new purposes set out in clause 1(1) of the Bill<sup>1</sup> will require the ONR to ensure compliance with:
  - nuclear safeguards regulations made by the Secretary of State; and
  - international agreements relating to nuclear safeguards.
4. The Bill also confers wide powers on the Secretary of State:
  - to make nuclear safeguards regulations, which will set out the detail of the domestic regime for nuclear safeguards;
  - to implement future new international agreements entered into by the United Kingdom, for example with the IAEA;
  - to amend certain legislation which make reference to parts of the existing agreements on nuclear safeguards between the IAEA and the United Kingdom.
5. We commend the helpful and well-drafted memorandum about the delegated powers in the Bill provided by the Department for Business, Energy and Industrial Strategy<sup>2</sup> which has none of the shortcomings identified in some of our previous reports and fully reflects our guidance about the preparation of delegated powers memoranda.<sup>3</sup>
6. We draw the following powers to the attention of the House.

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1 See new section 72 of the 2013 Act, as substituted by clause 1(1) of the Bill.

2 Department for Business, Energy and Industrial Strategy, [Nuclear Safeguards Bill Delegated Powers Memorandum](#)

3 See Appendix 4 of our Special Report on the Quality of Delegated Powers Memoranda (7th Report, Session 2014–15, [HL Paper 39](#)).

**Clause 1(2): new section 76A(5) of the 2013 Act—power to specify activities that are, or are not, to be treated as civil activities**

7. New section 76A (inserted into the 2013 Act by clause 1(2)) confers a wide power on the Secretary of State to make “nuclear safeguards regulations” for the purpose of:
- (a) ensuring that “qualifying nuclear material”, “qualifying nuclear facilities” or “qualifying nuclear equipment” are only available for use for “civil activities”, whether in the United Kingdom or elsewhere; or
  - (b) giving effect to provisions of a “relevant international agreement” (as to which see paragraphs 16 to 20 below).
8. We accept that that the new nuclear safeguard rules, which are currently contained in complex Euratom legislation,<sup>4</sup> are appropriately dealt with in regulations rather than in primary legislation. They will need to set out detailed and technical processes about (for example) record-keeping, inspection and monitoring, design of nuclear facilities or equipment, storage and disposal of nuclear material or equipment. It is likely to be impractical to include detailed provisions of this type in primary legislation.
9. We are also encouraged that the Bill provides for the affirmative procedure to apply to the following cases:
- the first set of nuclear safeguards regulations;
  - any regulations that create a new criminal offence;
  - regulations that specify activities that are, or are not, “civil activities”;
  - regulations that specify “fissionable material” for the purposes of the definition of “qualifying nuclear material”;
  - regulations that specify agreements for the purposes of the definition of “relevant international agreement”.

The negative procedure will apply to all other regulations under new section 76A.<sup>5</sup>

10. We consider that, with the exception noted below, none of the powers in new section 76A are inappropriate, and also that the proposed degree of Parliamentary scrutiny of the regulations is adequate.
11. The exception concerns new section 76A(5) of the 2013 Act. This allows the regulations to specify what are, or are not, to be treated as “civil activities”. The memorandum<sup>6</sup> gives the following justification:

“The Department considers that this power is necessary to enable further clarification of the regulation-making power provided by section 76A(1)(a). Civil activities has a natural meaning, but this power enables the Secretary of State to provide greater certainty about what are, or are not, civil activities. This in turn refines the purpose test contained in section 76A(1)(a) and provides enhanced certainty about when nuclear safeguards regulations can be made.”

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4 Commission Regulation (Euratom) No. 302/2005 of 8 February 2005.

5 See section 113 of the 2013 Act, as amended by paragraph 9 of the Schedule to the Bill.

6 Para 49.

12. “Civil activities” is a concept that is central to the reach of the nuclear safeguards regulations. We are not convinced that the term does have a natural meaning. We assume that it is intended to refer to non-military activities. If that is correct, then we see no reason why this should not be made clear on the face of the Bill. The power conferred by new section 76A(5) allows the Secretary of State to define what “civil activities” means; and therefore, in effect, to determine the whole scope of the regulations.
13. We acknowledge that the affirmative procedure would apply to new section 76A(5). However, this does not in itself justify giving a power to the Secretary of State to define a key term in secondary legislation.
14. In our view there should be a definition of “civil activities” on the face of the Bill, supplemented if necessary by a power to embellish its meaning in regulations, as is the case with the definition of “qualifying nuclear material”.<sup>7</sup>
15. **We recommend that the term “civil activities” should be defined in new section 76A of the 2013 Act, rather than leaving this to be dealt with exclusively in regulations.**

**Clause 1(3): new section 112(1B) of the 2013 Act— power to specify meaning of “relevant international agreement”**

16. Clause 1(3)(b) inserts new subsections (1A) to (1D) into section 112 of the 2013 Act. New subsection (1B) would allow the Secretary of State, by affirmative procedure regulations, to specify the meaning of “relevant international agreement”. The Secretary of State would have power to specify any agreement (whether or not ratified) to which the UK is party relating to nuclear safeguards; and “agreements” may include undertakings given by the UK to the IAEA in respects of guidance or other documents issued by the IAEA.<sup>8</sup>
17. The definition of “relevant international agreement” is important for the purposes of the following provisions of the 2013 Act:
  - (a) New section 76A(1)(b) (referred to above). This will confer power on the Secretary to State by regulations to give effect to any future “relevant international agreement”. The specification of a new international agreement would therefore widen those regulation-making powers.
  - (b) Section 72 (as substituted by clause 1(1) of the Bill) which defines the ONR’s “nuclear safeguards purposes” in Part 3 of the 2013 Act. One purpose listed in that section is that of ensuring compliance by the UK with “a relevant international agreement”. Therefore when the Secretary of State makes regulations under new subsection (1B) of section 112 to specify an agreement as “a relevant international agreement”, the functions of the ONR are extended so as to include the taking of steps to ensure compliance with that agreement.
  - (c) Paragraph 20 of Schedule 9 which allows the ONR and others to disclose certain types of protected information for the “nuclear safeguards purposes”. Specifying a new agreement in regulations under new subsection (1B) would also result in those powers being widened to allow for disclosure of information for purposes connected with the specified international agreement.

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<sup>7</sup> See new section 76A(7) and (8).

<sup>8</sup> See new section 112(1C).

18. The memorandum<sup>9</sup> justifies new section 112(1B) as follows:

“Negotiations are currently ongoing both with the IAEA to negotiate new safeguards agreements and with several key trade partners in relation to [nuclear co-operation agreements]. These negotiations will not have been concluded at the time of passage of the Bill through Parliament. Furthermore, there is a need to regularly update the list as the number and identity of international agreements and obligations the UK makes can change. For example, there could be a new international treaty or new domestic undertakings.”

19. We agree that there is a good case for the Secretary of State to have the power to specify the new agreements currently being negotiated with the IAEA and others as “relevant international agreements”. However, in view of the important consequences of specification referred to in paragraph 17 above, we are not persuaded that the Government should have an enduring power to specify any nuclear agreement entered into many years in the future, long after Euratom withdrawal.
20. **We therefore recommend a “sunset” provision so that the power in new section 112(1B) may not be exercised after two years from the date on which the UK withdraws from Euratom.** This would reflect clause 8(4) of the European Union (Withdrawal) Bill, under which Ministers’ powers to amend legislation so as to prevent a breach of the UK’s international obligations arising from EU withdrawal cease to have effect two years after exit day.

**Clause 2(1)—power to amend legislation relating to nuclear safeguards**

21. Clause 2(1) contains a Henry VIII power which would allow the Secretary of State, by affirmative procedure regulations, to amend—
- (a) the Nuclear Safeguards and Electricity (Finance) Act 1978 (“the 1978 Act”);
  - (b) the Nuclear Safeguards Act 2000 (“the 2000 Act”); and
  - (c) the Nuclear Safeguards (Notification) Regulations 2004<sup>10</sup> (“the 2004 Regulations”),

in consequence of a “relevant safeguards agreement”. That term is defined in clause 2(2) as “an agreement (whether or not ratified) relating to nuclear safeguards to which the United Kingdom and the International Atomic Energy Agency are parties”.

22. The memorandum<sup>11</sup> explains that the existing agreements between the IAEA, the UK and Euratom are implemented by the above three pieces of legislation. They make detailed references to the specific provisions of the two existing agreements – the Voluntary Offer Agreement (VOA) and Additional Protocol (AP) – between the UK, Euratom and the IAEA. The 1978 Act (for example) confers powers to facilitate inspections by IAEA inspectors under the VOA; and the 2000 Act and the 2004 Regulations implement the UK’s obligations under the AP.

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9 Para 71.

10 SI 2004/1255.

11 Para 77.

23. The Government will have to negotiate new agreements with the IAEA to replace the existing VOA and AP which will become ineffective on the UK's withdrawal from Euratom. The power in clause 2(1) ensures that the 1978 and 2000 Acts and the 2004 Regulations can be updated to reflect the replacement agreements without the need for primary legislation.

24. The memorandum goes on to say:<sup>12</sup>

“It is essential that the specified safeguards legislation is amended to make correct reference to the new agreements that the UK envisages concluding with the IAEA (to replace the existing two agreements). Such changes would need to take effect on the UK's withdrawal from the Euratom Treaty. For example, if section 2 of the 1978 Act is not updated, IAEA inspectors may lack appropriate domestic legal cover to enter nuclear facilities, make safeguards inspections or verify design information as the 1978 Act specifically refers to provisions of the current IAEA agreements which will become ineffective once the UK withdraws from Euratom.

Without amendment, the existing provisions will become ineffective, leaving the UK without an effective safeguards regime and in breach of any new international safeguards standards agreed with the IAEA.

The 1978 Act and the 2000 Act are unusual in that they make detailed references to the provisions of international agreements. As such references are likely to change as a result of any amendment to these agreements, a Henry VIII power is necessary to make the changes to the relevant Acts to update those references.

The detailed amendments required will not be known until the new VOA and AP between the UK and the IAEA are in place. As such the nature of the power is necessary to ensure the necessary amendments are made in time to give effect to the new agreements and therefore ensure the UK has a safeguards regime that complies with its international obligations in place on the UK's withdrawal from the Euratom Treaty.”

25. We agree that there is a good case for the Government to have powers to amend both primary and secondary legislation to ensure that the UK will comply with its international obligations upon withdrawal from Euratom. However, no good reason is given in the memorandum to justify the continuation of that power indefinitely. As the Bill stands, the Secretary of State could amend the 1978 and 2000 Acts and the 2004 Regulations in consequence of a “relevant safeguards agreement” entered into many years after the UK's withdrawal from Euratom.

26. **We therefore recommend a sunset provision for clause 2(1) too. This is so that the power it confers may not be exercised after two years from the date of the UK's withdrawal from Euratom.**

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12 Paras 78 to 81.

**AGE OF CRIMINAL RESPONSIBILITY BILL [HL]**

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

**ASSET FREEZING (COMPENSATION) BILL [HL]**

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

**HOUSE OF LORDS (HEREDITARY PEERS) (ABOLITION OF BY-ELECTIONS) BILL [HL]**

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

**MODERN SLAVERY (VICTIM SUPPORT) BILL [HL]**

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

## **APPENDIX 1: 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 7 February 2018 Members declared no interests.

### **Attendance**

The meeting on the 7 February 2018 was attended by Lord Blencathra, Lord Jones, Lord Lisvane, Lord Thomas of Gresford and Lord Tyler.