

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

14th Report of Session 2017–19

**Draft Regulatory
Reform (Fire Safety)
(Custodial Premises)
Subordinate
Provisions 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 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. 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.

Fourteenth Report

DRAFT REGULATORY REFORM (FIRE SAFETY) (CUSTODIAL PREMISES) SUBORDINATE PROVISIONS ORDER 2018

1. This Order amends the Regulatory Reform (Fire Safety) Order 2005 (“FSO 2005”) to deal with an anomaly that has arisen as a result of the use of private contractors and leasing arrangements in the prison estate. The instrument is laid by the Home Office, which currently has responsibility for fire safety matters, and is accompanied by an Explanatory Memorandum¹ and an Impact Assessment². It applies to England and Wales.
2. Recent examination of contracts and leasing arrangements concluded that about 7% of the Government’s custodial estate no longer met a definition, based on ownership, set out in FSO 2005. Those premises outside the definition would default to inspection by the local fire authority for the area, which defeats the policy intention that the Crown Premises Fire Inspection Group (CPFIG), with its specialised knowledge and enhanced security training, should be the enforcing authority for all prisons.
3. As well as restoring the original policy intention, the revised definition set out in this Order clarifies the intended scope by listing, in new paragraphs (iii) to (ix) of article 25(1)(e) of FSO 2005, the specific types of custodial premises, for which it is intended that the CPFIG inspectors should have responsibility whether operated by the Crown or a private contractor. These include, for example, custodial premises for young offenders and removal centres under the Immigration and Asylum Act 1999. By specifying the intended premises as a list in this way, the revised definition also distinguishes more clearly that other premises where people can be detained (such as secure health institutions operated by the NHS) are not intended to be included and should continue to be the responsibility of the fire and rescue authority in the areas where they are located. The Impact Assessment also states that the new definition should also be sufficiently flexible to cater for any future evolutions in the custodial estate.
4. The Regulatory Reform Act 2001 (“the 2001 Act”) under which this Order is made has largely been repealed (and replaced by the Legislative Reform Act 2006). However there is a residual power under section 4(4) to allow the original instrument made under the 2001 Act to be amended by this means. All the requisite provisions of the 2001 Act have been satisfied, in particular Welsh Ministers and fire officers have been consulted and are content.

Conclusion

5. **We are satisfied that the Order meets the requirements of the 2001 Act, is appropriate for the Subordinate Provisions Order procedure and may serve to improve the clarity of the existing legislation.**

1 [Draft Regulatory Reform \(Fire Safety\) \(Custodial Premises\) Subordinate Provisions Order 2018 Explanatory Memorandum](#)

2 [Draft Regulatory Reform \(Fire Safety\) \(Custodial Premises\) Subordinate Provisions Order 2018 Impact Assessment](#)

APPENDIX 1: MEMBERS AND DECLARATIONS OF 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.

For the business taken at the meeting on 21 February 2018 Members declared no interests in relation to the draft Regulatory Reform (Fire Safety) (Custodial Premises) Subordinate Provisions Order 2018.

Attendance

The meeting on the 21 February 2018 was attended by Lord Blencathra, Lord Flight, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Rowlands, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler.