



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

22nd Report of Session 2023–24

Renters (Reform) Bill

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session, most recently on 8 November 2023, 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.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord Carlile of Berriew](#)

[Baroness Chakrabarti](#)

[Lord Cunningham of Felling](#)

[Baroness Finlay of Llandaff](#)

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. 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.

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Kiran Kaur (Committee Operations Officer).

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 to the Delegated Powers and Regulatory Reform Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Twenty Second Report

RENTERS (REFORM) BILL

1. This Bill, which was brought from the House of Commons on 1 May 2024, reforms the law relating to rental accommodation. The Department for Levelling Up, Housing and Communities has supplied a delegated powers memorandum (“the Memorandum”)¹ relating to the Bill’s delegated powers.
2. We draw the attention of the House to four matters.

Clause 3(8)—disapplication or modification of clause 3

3. Clause 1 of the Bill stipulates that all assured tenancies will be periodic and can no longer have fixed terms. Clause 2 provides that assured shorthold tenancies cannot be created in future. Clause 3 addresses issues that may arise in relation to existing leases that allow sub-letting either on an assured tenancy for a fixed or minimum term or an assured shorthold tenancy – but not on a periodic assured tenancy. In the absence of clause 3, the tenancy reforms of the Bill might otherwise prevent leaseholders from continuing to sub-let their dwellings without breaching the terms of their own leases.
4. Clause 3(8) allows the Secretary of State by regulations to disapply or modify the effect of clause 3 in relation to existing leases of a specified description. These regulations are subject only to the negative procedure.²
5. We have long pointed out that every Henry VIII power - that is, a delegated power which enables a Minister, by delegated legislation, to amend, repeal or otherwise alter the effect of an Act of Parliament, including where the power is expressed in terms of “modification” – should be clearly identified in the Memorandum. But clause 3(8) is not identified in the Memorandum as a Henry VIII power.
6. We expect a compelling reason for Henry VIII powers not to use the affirmative procedure. Because the Memorandum does not mention that clause 3(8) contains a Henry VIII power, it offers no reason (let alone a compelling reason) why it should not use the affirmative procedure like the great majority of Henry VIII powers.
7. The Memorandum offers no justification even for the negative procedure. Under the heading “justification for the procedure” we are told that the power will ensure the Government can prevent leaseholders from being adversely impacted by the reforms if further issues come to light. But this is a justification for the power rather than for the procedure. **Accordingly, regulations made under clause 3(8) should be subject to the affirmative procedure.**

Clause 37—persons of other descriptions

8. Chapter 3 of Part I of the Bill prohibits discriminatory bans and restrictions on the letting of private rented sector properties (a) on the basis that a child

1 Memorandum on Renters (Reform) Bill, from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee (2 May 2024): <https://bills.parliament.uk/publications/55347/documents/4787>.

2 Memorandum, Clause 132(5) and (6).

would live with or visit a person at the property, or (b) to those in receipt of benefits. Chapter 3 is worked out in detail in relation to these two categories, including provisions in leases, mortgages and insurance contracts.

9. However, clause 37 contains a Henry VIII power allowing Ministers to make affirmative regulations corresponding to the protections in Chapter 3 (with or without modifications) in relation to persons of any other description whatsoever. When making such regulations Ministers can amend or repeal any Act of Parliament ever passed (including the Renters (Reform) Bill itself once enacted).
10. The two categories mentioned in Chapter 3 (children and benefit claimants) merit the full scrutiny provided by an Act of Parliament. By contrast, innumerable categories can be added by statutory instrument without the opportunity for scrutiny and amendment provided by a bill. In terms of policy, the addition of such categories (the Explanatory Notes mention prison leavers and those with a history of offending but there could be many more) may be desirable or controversial depending on the precise category. But it is undeniable that a considerable extension of Chapter 3 can be achieved by unamendable Ministerial regulations rather than by Act of Parliament. This is inimical to parliamentary scrutiny.
11. The Department's justification for this wide Henry VIII power occupies just eight lines in the Memorandum.
12. The first reason is flexibility – to respond to future developments and changing market practices within the private rented sector. But this response function is the function of Parliament as a whole, not just Ministers of the Crown.
13. The second reason is that it may become necessary to protect other cohorts. Given that Parliament is currently legislating to protect the first two cohorts (benefit claimants and children) it is not clear to us why it cannot be left to Parliament to legislate for additional cohorts when there is a provable need to do so.
14. The third reason is that “any future extensions will be subject to a strong evidence base, careful scrutiny and broad consensus”.³ But the evidence base would be subject to considerably more scrutiny by an Act of Parliament than by an unamendable statutory instrument. Without such scrutiny, it remains an assertion to say that future regulations will have a strong evidence base and reflect a broad consensus.
15. **The Henry VIII power in clause 37 is inappropriately wide and should be removed from the Bill.**

Clause 132(9)—dehybridisation

16. Clause 56(1) allows the Secretary of State to make affirmative regulations requiring residential landlords to be members of a landlord redress scheme. This might entail a phased introduction, for example, by geographical location or by landlord property portfolio size, meaning that some landlords might be required to join a scheme before others. This in turn might engage standing orders on hybrid instruments. Accordingly, clause 132(9) provides

³ Memorandum, para 88.

that regulations made under clause 56(1) that would otherwise engage standing orders on hybridity will not do so.

17. In the absence of the hybrid instruments procedure, regulations under clause 56(1) benefit from the affirmative procedure. And the Memorandum⁴ expresses the Government's intention to engage with relevant landlords and tenants who are likely to be specifically affected if regulations are proposed that would otherwise be classed as hybrid instruments.
18. **In accordance with our usual practice, we draw the dehybridisation provision in clause 132(9) to the attention of the House so that it can satisfy itself that any interests that would normally be afforded protection by the hybrid instruments procedure are afforded appropriate protection by other means (including consultation).**

Schedule 1, paragraph 19—stepping stone accommodation

19. Schedule 1 to the Bill amends the law relating to a landlord's grounds for possession in assured tenancies. Paragraph 19 inserts a new ground for possession (Ground 5H) for landlords who are registered providers of social housing or a charity. The ground consists in the tenant no longer meeting "eligibility criteria" specified in affirmative regulations made by the Secretary of State.
20. The Bill and the accompanying documentation offer no indication as to what these eligibility criteria might consist of. The Memorandum (paragraph 390) mentions the familiar argument that the power provides Ministers with flexibility. It certainly does. The problem is that it allows Ministers free rein to set whatever criteria they like when they like. The Memorandum says (paragraph 389)—

"It is necessary to retain a narrow scope for this ground to prevent unscrupulous landlords seeking to use the ground beyond the circumstances for which it was intended. The level of detail required to carefully define such schemes may be too great to include in primary legislation."
21. But the scope of the power in paragraph 19 is anything but narrow. Ministers are free to set the "eligibility criteria" that must be met by tenants, there being nothing in the Bill, the Explanatory Notes or the Memorandum indicating (a) what these criteria might be, (b) what they might include or (c) the circumstances in which they might be available. It might have been clearer if the eligibility criteria had been stated in part on the face of the Bill with a power to supplement them in regulations. As it is, the Bill says nothing, and regulations will say everything. **The width of the power in paragraph (a) of Ground 5H in paragraph 19 of Schedule 1 is excessive and should be re-stated with a greater degree of precision.**

⁴ Memorandum, para 330.

APPENDIX 1: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 22 May 2024, Members declared no interests.

Attendance

The meeting was attended by Lord McLoughlin, Lord Carlile of Berriew, Lord Cunningham of Felling, Lord Rooker, Baroness Chakrabarti, Baroness Finlay of Llandaff, The Earl of Lindsay, Baroness Bakewell of Hardington Mandeville and Baroness Humphreys.