



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

13th Report of Session 2023–24

**Digital Markets,
Competition and
Consumers Bill:
Government Response**

Ordered to be printed 6 March 2024 and published 6 March 2024

Published by the Authority of the House of Lords

HL Paper 81

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.

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Committee Staff

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

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 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.

Thirteenth Report

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL: GOVERNMENT RESPONSE

1. We considered this Bill in our 3rd Report of this Session.¹ The Government have responded by way of a letter from Viscount Camrose, Parliamentary Under Secretary of State for the Department for Science, Innovation and Technology and Lord Offord of Garvel CVO, Parliamentary Under Secretary of State for the Department for Business and Trade. The response is printed at Appendix 1.

1 *3rd Report*, (Session 2023-24, HL Paper 26)

APPENDIX 1: DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL: GOVERNMENT RESPONSE

Letter from Viscount Camrose, Parliamentary Under Secretary of State for the Department for Science, Innovation and Technology and Lord Offord of Garvel CVO, Parliamentary Under Secretary of State for the Department for Business and Trade, to the Rt Hon. the Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

We would like to thank the Delegated Powers and Regulatory Reform Committee for its report of 8 December following its scrutiny of the Digital Markets, Competition and Consumers (DMCC) Bill. Both the Department for Business and Trade and the Department for Science, Innovation and Technology are grateful for the Committee's work in this area and have carefully considered the report's recommendations.

As the Ministers responsible for the Bill, we understand the importance of, and the Committee's emphasis on, parliamentary accountability and taking a proportionate approach to granting power to the executive. We want to assure the Committee that we sought to strike the right balance in all instances across the Bill when considering how to drive growth, innovation and productivity, and ensure that businesses and consumers in the UK reap the benefits of competitive markets.

In summary, we accept the Committee's recommendations relating to clause 232²—the right to redress—and, in addition, propose the removal of the delegated power in clause 6(2). We are pleased to set out our full consideration of each of the Committee's recommendations in this letter. Please note that the clause numbers referred to below are reflective of the latest Bill print³ and may differ to the clause numbers in the Committee's report.

Clause 6: Position of strategic significance

The DMCC Bill will have a significant impact on the regulation of digital markets. The newly created Digital Markets Unit (DMU) will oversee a new regulatory regime for the most powerful digital firms that are considered to have Strategic Market Status (SMS). Clause 6 (1) sets out conditions, at least one of which, must be met to establish a position of strategic significance and (2) allows the Secretary of State to vary these conditions by regulations subject to the affirmative procedure.

We appreciate the Committee sharing its concerns about the use of a delegated power in clause 6(2) and requesting additional information. This delegated power was intended to ensure that the regime can adapt quickly to changes in digital markets. Rapid developments in technology and/or changes to business models mean firms gain and use market power in digital markets in different ways today than they did previously, and the related ways of measuring and assessing market power have also evolved.

We have reflected on the Committee's feedback, and additionally on the fact that Clause 6 plays a key role in defining the framework and application of the regime. We note that the definition, as currently drafted, is suitably broad and technology

² Clause 231, referenced in the Committee's report of 8 December 2023, is referred to as clause 232 in this document as it is reflective of the latest Bill print, published on 8 February 2024.

³ [Digital Markets, Competition and Consumers Bill](#), [HL Bill 47 (2023-24)]

agnostic that it will stand the test of time, and any changes to the conditions in clause 6(1) could widen or narrow its application in a significant way. To that end, we are content to accept the Committee's feedback and will remove this delegated power from the Bill.

Clause 110: We recommend that the rules made pursuant to clause 110 be made by statutory instrument, with the negative procedure being sufficient.

Clause 110 enables the CMA to recoup costs relating to the delivery of the Digital Markets regime from firms designated with SMS, via a new levy. The CMA will set out its levy methodology, in accordance with principles set out in legislation, in rules that must be consulted on and laid in Parliament in draft form before publication. Levy fees will be returned to the Consolidated Fund and will ensure the regime represents the best value for money for the taxpayer.

We are grateful to the Committee for raising its concerns that the CMA's rules for calculating the SMS levy would not have sufficient parliamentary scrutiny. While we appreciate the benefits that statutory instruments with negative procedure may bring to clause 110, we maintain that our current approach would be in line with precedent in other regulatory regimes and strike the right balance between accountability and flexibility. Therefore, the Government is retaining clause 110 in the Bill as currently drafted.

We want to reassure the Committee that in designing the levy, we considered the precedent for parliamentary engagement offered by a broad range of existing regulator levy models. As the methodology for and calculation of levies is a technical operational matter, there is precedent for their design to be led by regulators within statutory principles established by Parliament. These include Ofcom's levy (section 38 of the Communications Act 2003), the Payment Services Regulator (Schedule 4, paragraph 9 of the Financial Services (Banking Reform) Act 2013, the Financial Conduct Authority (Schedule 1ZA, paragraph 23 of the Financial Services and Markets Act 2000).

The design of clause 110 requires the CMA to lay a copy of the draft levy rules before Parliament, ensuring Parliament has an opportunity to review and provide comments at a formative stage as they are being developed with industry, should it wish to do so. This allows Parliament to consider whether the draft rules reflect the legislative intent of Parliament, within the parameters set out by it in 110(4). This procedure must also be followed when updating the levy over time – for example, to reduce any unnecessary administrative burden in its delivery based on the CMA's experience of operating the levy. The process of consulting and laying the draft in Parliament ensures appropriate scrutiny of each instance of levy rules whilst allowing more agility than would be possible if revisions needed to be laid through an SI process.

Parliament will continue to scrutinise the CMA's overall operation through its annual reporting and committee appearances. The design of the levy will also receive scrutiny from the Treasury, given the Treasury's role as financial sponsor of the CMA.

Clause 205(1)⁴: We recommend, consistently with the explanation set out in the Memorandum, that the power to amend the various monetary penalties mentioned in clause 205(1) can only be used to take into account changes in the value of money.

Schedule 16, paragraph 16I (1): We likewise recommend that the power to amend the various monetary penalties mentioned in paragraph 16I(1) of Schedule 16 can only be used to take into account changes in the value of money.

Clause 205 in tandem with Schedule 16, paragraph 16I, gives the Secretary of State a delegated power (subject to the affirmative procedure) to amend the maximum amount of the fixed or daily monetary penalties in Part 3 of the Bill. This relates to consumer protection enforcement and non-compliance with an information notice issued under paragraph 14 of Schedule 5 to the Consumer Rights Act 2015 (respectively).

We recognise the Committee's preference to limit this delegated power so the specified maximum amounts of the relevant penalties can only be amended by the Secretary of State in line with inflation. This was reflective of the Delegated Powers Memorandum and the Explanatory Notes published alongside the Bill at the time of the Committee's report.

However, the Delegated Powers Memorandum and the Explanatory Notes were intended to give an illustrative, rather than an exhaustive, example of the potential use of this power. We acknowledge that we did not make this clear in the Delegated Powers Memorandum and that the Committee's recommendations could only be based on the partial information provided in this document.

Given that Part 3 of the Bill introduces a new civil monetary penalty regime, we anticipate that more evidence will emerge over time about the relationship between the amount set for the maximum fixed or daily penalties in the Bill and the incidence of breaches and/or any unintended effects. For example, enforcement practice may uncover trends about the type of enforcement subjects on whom penalties are imposed, including for breaches of consumer protection law and non-compliance with information notices. In addition, it may reveal whether penalties of that magnitude tend to cause genuine and disproportionate hardship or, conversely, are seen as cost of doing business for those of significant means.

We therefore consider it important that the Government retains the delegated powers as currently drafted and keeps the use of the new penalty powers under review to determine whether the new legislation delivers the expected policy outcome of effective deterrence of non-compliance in a proportionate manner. This requires the flexibility to amend the maximum fixed or daily penalty amounts (both upwards and downwards). We want to reassure the Committee that our approach is consistent with non-exhaustive formulations found in comparable precedents, which do not specify any reasons for exercising the amending power. These include, but are not limited to, section 41(8)(e) of the National Security and Investment Act 2021, section 23(6) and section 25(5) of the Immigration Act 2014.

⁴ Clause 204, referenced in the Committee's report of 8 December 2023, is referred to as clause 205 in this document as it is reflective of the latest Bill print, published on 8 February 2024.

Clause 232: Accordingly, we recommend that the affirmative procedure should be applicable for all exercises of the power in clause 231, and not just the first exercise of the power.

When the consumer is the focus of a competitive market, it gives all consumers access to better products. We are aware of the importance that redress plays in achieving this when there are problems. Clause 232 allows the Secretary of State to make regulations relating to consumer redress. The Bill, as currently drafted, sets out that the first regulations made under this section are subject to the affirmative procedure and any subsequent regulations are made under the negative procedure. As the Committee notes in its report, this is because the first exercise of this power would replace the private redress provisions set out in the Consumer Protection from Unfair Trading Regulations (2008).

We thank the Committee for its important scrutiny in this area. We have carefully reflected on the Committee's helpful views and are pleased to accept the recommendation that the affirmative procedure should be applicable for all regulations in clause 232, not just the first exercise of the power.

Once again, we would like to thank the Committee for its report on the delegated powers in this Bill. We hope that the additional information provided, and our proposed amendments reflecting the recommendations, provide sufficient reassurance to the Committee.

We look forward to continuing to work with the House, and your Committee, as the Bill progresses into Report Stage on 11 March.

4 March 2024

APPENDIX 2: 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.