

HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

2nd Report of Session 2024–25

- Passenger Railway Services (Public Ownership) Bill**
Product Regulation and Metrology Bill [HL]
Water (Special Measures) Bill [HL]
Property (Digital Assets etc) Bill [HL]
Asylum Support (Prescribed Period) Bill [HL]
Consumer Products (Control of Biocides) Bill [HL]
Education (Assemblies) Bill [HL]
Environmental Targets (Public Authorities) Bill [HL]
Mortgage Prisoners Inquiry Bill [HL]
**Public Authority Algorithmic and Automated Decision-Making
Systems Bill [HL]**
Refugees (Family Reunion) Bill [HL]
**Universal Credit (Standard Allowance Entitlement of Care
Leavers) Bill [HL]**
Complications from Abortions (Annual Report) Bill [HL]
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Listed Investment Companies (Classification etc) Bill [HL]
**Non-Consensual Sexually Explicit Images and Videos (Offences)
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Women, Peace and Security Bill [HL]

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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 29 July 2024, 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](#)

[Lord Goodman of Wycombe](#)

[Baroness Humphreys](#)

[The Earl of Lindsay](#)

[Lord McLoughlin](#) (Chair)

[Lord Rooker](#)

Registered 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.

Publications

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

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Anisa Rashid (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.

Second Report

PASSENGER RAILWAY SERVICES (PUBLIC OWNERSHIP) BILL

1. This Bill amends the Railways Act 1993 (“the 1993 Act”) to remove the presumption in favour of private sector operation of franchised passenger services. It is intended to facilitate the Government’s commitment to bring such train operations back into public ownership when the current franchise agreements end. The Bill contains two delegated powers, and the Department for Transport has provided a delegated powers memorandum (“the memorandum”).¹ We draw the attention of the House to one of those powers.
2. The Bill operates by generally prohibiting both the extension of existing private sector franchise agreements and the entering into of new such agreements. However, the Bill also inserts two new sections into the 1993 Act (sections 30A and 30B) which will allow the continuation of the existing private sector franchise arrangements, where the Secretary of State is the franchising authority and is satisfied that it will not be reasonably practicable to provide passenger rail services by a public sector company when the existing private sector franchise agreement comes to an end.
3. Subsection (4) of section 30A enables the Secretary of State by regulations to repeal that section and section 30B. Despite being a Henry VIII power, the regulations are subject only to the negative resolution procedure. The use of the negative resolution procedure is explained in paragraph 16 of the memorandum on the basis of the limited scope of the power and the fact that the power is intended only for the purpose of removing the provisions once they become obsolete.
4. We consider that the negative resolution procedure would be appropriate if the power could only be exercised once sections 30A and 30B are spent (which will be the case when all the existing private sector franchising arrangements have come to an end). However, that limitation does not appear in section 30A(4) as drafted; instead it simply confers a power on the Secretary of State to repeal sections 30A and 30B, without limiting the circumstances in which the power may be exercised.
5. **Accordingly, we recommend that the House seeks clarification from the Minister as to:**
 - **whether the Government intend that the power to repeal sections 30A and 30B should only be exercised once all the existing private sector franchising arrangements have come to an end; and**
 - **why, if that is the intention, the power is not limited so that it may only be exercised in those circumstances.**

We also take the view that, in the absence of such a limitation, the affirmative resolution procedure should apply.

¹ Memorandum on the Passenger Railway Services (Public Ownership) Bill from the Department for Transport to the Delegated Powers and Regulatory Reform Committee (5 September 2024): <https://bills.parliament.uk/publications/56125/documents/5043>

PRODUCT REGULATION AND METROLOGY BILL [HL]

6. This Bill was introduced in the House of Lords on 4 September. Its Second Reading took place on 8 October.
7. The Bill makes provision with respect to:
 - the marketing and use of products;
 - the units of measurement that are used to express quantities (whether of goods or other things); and
 - the quantities in which goods must or may be marketed.
8. The Bill contains 14 clauses and one schedule.
9. The Department for Business and Trade has provided a Delegated Powers Memorandum (“the Memorandum”)² for the Bill.
10. We draw the following powers to the attention of the House.

Clause 1, 2, 3 and 9—powers to make product regulations

11. These clauses make provision with respect to the regulation of the marketing and use of all products³ (both consumer products and industrial products) in the UK save only for the “excluded products” listed in the Schedule to the Bill. The excluded products include food, products of animal origin, aircraft, military equipment, medicines and medical devices.
12. Clause 1 gives the Secretary of State power to make provision by regulations in relation to the marketing or use of products in the UK (“product regulations”), for the purpose of:
 - reducing or mitigating risks presented by products;
 - ensuring that products operate efficiently or effectively; or
 - ensuring that products designed for weighing or measuring operate accurately.
13. Clause 1 also gives the Secretary of State power to include in product regulations provision which corresponds, or is similar, to a provision of EU law⁴ for the purpose of reducing or mitigating the environmental impact of products.
14. Clause 2 sets out matters in relation to which product regulations may impose “product requirements”. It also specifies categories of persons on whom such requirements may be imposed. Clause 2(7) allows product regulations to provide that “product requirements” are to be treated as met if requirements of EU law specified in those regulations are met.

2 Memorandum on the Product Regulation and Metrology Bill [HL] from the Department for Business and Trade to the Delegated Powers and Regulatory Reform Committee (30 August 2024): <https://bills.parliament.uk/publications/56126/documents/5044>

3 “Product” is broadly defined in clause 1(5) as “a tangible item that results from a method of production”.

4 The provision must correspond, or be similar, to a provision of “relevant EU law”, which means EU law that has the purpose of harmonising the conditions for the marketing or use of products in the EU.

15. Clause 3 makes provision with respect to the enforcement of product regulations.
16. Clause 9 provides that, in consequence of any provision made by the Bill or by product regulations, such regulations may repeal provision made by Parts 2, 4 and 5 of the Consumer Protection Act 1987, the Gun Barrel Proof Acts 1868 to 1978 and section 77 of, and Schedule 5 to, the Consumer Rights Act 2015.
17. The power to make product regulations is subject to the negative procedure save where it is exercised:
 - to create or widen the scope of a criminal offence;
 - to create powers of entry, inspection or search;
 - to disapply or modify product regulations in cases of emergency;
 - to make provision about the disclosure of information by or to a relevant authority⁵ carrying out functions under product regulations;
 - to make provision for a relevant authority to impose fees in respect of costs incurred by the authority in carrying out its functions; or
 - to amend or repeal primary legislation.

Skeleton legislation

18. Clauses 1, 2, 3 and 9 of the Bill are an example of what the Committee refers to as “skeleton legislation”. They contain almost no substance about the marketing and use of products but instead give Ministers very broad powers which confer considerable discretion to legislate in that area by statutory instrument. Almost all of the substance of the regulatory regime that is to govern the marketing and use of products (including product safety) is to be left to regulations. Even existing provision in primary legislation may be replaced by provision in regulations. And the exercise of the powers is unfettered by any requirement for consultation, for criteria to be met or for meaningful pre-conditions to be satisfied.
19. The concern with “skeleton legislation” is its compatibility with the established principle that the principal aspects of policy should be on the face of a bill and only its detailed implementation left to delegated legislation. As we stated in our Democracy Denied Report⁶: “Skeleton legislation signifies an exceptional shift in power from Parliament to the executive and entails the Government, in effect, asking Parliament to pass primary legislation which is so insubstantial that it leaves the real operation of the legislation to be decided by ministers”⁷.
20. Our Guidance for Departments on the role and requirements of the Committee⁸ states that “Skeleton legislation should only be used in the most exceptional circumstances”. It adds that, if a Bill contains a skeleton clause,

5 Under clause 3, product regulations may designate a person as a “relevant authority” with powers to enforce product regulations.

6 *12th Report* (Session 2021–22, HL Paper 106)

7 At para 66.

8 Guidance for Departments (December 2023): <https://committees.parliament.uk/publications/42694/documents/212126/default/>

the Delegated Powers Memorandum that a department must prepare to assist the Committee with its scrutiny of the Bill should provide a full justification for this approach, including why no other approach was reasonable to adopt and how the scope of the skeleton provision is constrained.

21. We consider that the Memorandum fails to meet this requirement in respect of clauses 1, 2, 3 and 9 of the Bill.
22. The first respect in which the Memorandum falls short is in its explanation of the existing legislation that could be amended and indeed replaced by regulations made under the powers in those clauses.
23. Both the Memorandum and the Explanatory Notes to the Bill have little to say about that existing legislation beyond high-level statements such as the following:
 - the sale and supply of the “huge number” of products to which the Bill applies is “underpinned by an extensive body of law”⁹;
 - “the legal landscape is complex and technical, primarily set out in secondary legislation and based on assimilated law”¹⁰ (the body of UK domestic law derived originally from EU obligations); and
 - “The product regulatory framework in the UK covers most consumer products, for example toys and cosmetics, and a significant number of industrial products too, such as lifts and pressure equipment. The overwhelming majority of this legislation is assimilated law, transposed into UK law while the UK was part of the EU and then assimilated following the EU exit process”¹¹.
24. The Memorandum fails to identify the legislation in question or to explain what it does or its significance in policy terms. It even fails to explain in any detail the content and significance in policy terms of the primary legislation that could be replaced by regulations made under the Bill.
25. This scarcity of explanation makes it difficult to understand the significance of the changes that the powers could be used to make. This gives rise to uncertainty as to whether there may be aspects of the regulatory regime that the Bill leaves to be provided for in regulations which might be considered sufficiently important in policy terms to instead merit inclusion in the Bill itself, where they would be subject to the much greater Parliamentary scrutiny afforded to primary legislation.
26. This most obviously applies to those aspects of the existing regulatory regime that are contained in primary legislation that the Bill allows to be replaced and repealed by product regulations¹². The fact that the Bill allows this merits a full explanation and a compelling justification. Yet although the Memorandum states that the repeal of that primary legislation by regulations is sufficiently important to merit affirmative procedure scrutiny, it offers no explanation as to why matters that have hitherto been considered sufficiently

9 At para 2 of the Memorandum.

10 At para 13 of the Memorandum. “Assimilated law” includes (a) post-EU Exit UK versions of EU Regulations, and (b) UK statutory instruments made to give effect to EU obligations.

11 At para 5 of the Explanatory Notes.

12 Consumer Protection Act 1987, [parts 2, 4 and 5](#); Gun Barrel Proof Acts [1868 to 1978](#); Consumer Rights Act 2015, [section 77](#) and [schedule 5](#).

important in policy terms to merit inclusion in primary legislation should be left to regulations at all.

27. It is also unclear whether there may be aspects of the regulatory regime that are currently contained in assimilated law (the body of UK domestic law derived originally from EU obligations) that might be considered sufficiently important in policy terms to merit inclusion in the Bill rather than in regulations.
28. Even where that assimilated law is contained in subordinate legislation, that is not by itself a good reason for any replacement provisions also to be contained in subordinate legislation. This is a point that we have made in several previous reports, including our report on the Medicines and Medical Devices Bill¹³, where the Government sought to justify wide skeleton powers on the basis that it was replacing one set of regulations with another. In that case, we emphasised¹⁴ that the existing regulations had been made under the special power in section 2(2) of the European Communities Act 1972, the purpose of which was to allow EU law requirements to be implemented in UK domestic law by subordinate legislation - and that the power in section 2(2) was subject to “a critical constraint”: it gave Ministers “power to make laws giving effect to EU law—not simply power to make laws that Ministers may wish to make”.
29. In our report on the Energy Bill, we stated that:

“the fact that provisions governing a subject area are currently contained in regulations made under section 2(2) of the European Communities Act 1972 does not by itself make it appropriate to use a regulation-making power to amend and extend the provisions in that subject area. Instead, the proposal to confer regulation-making powers needs to be justified on its own merits, particularly where, as in these cases, they are framework powers which are therefore capable of providing a very broad scope of regulation-making powers to the Secretary of State.”¹⁵
30. The justification given in the Memorandum for the powers in clauses 1, 2, 3 and 9 is that:
 - aspects of the regulatory regime for products may need to be updated swiftly and frequently (for example “to respond to emerging hazards and risks, and developments in technology and scientific or technical understanding”¹⁶); and
 - the powers will give Ministers the flexibility to legislate to align UK law with EU rules or to diverge from those rules.
31. We consider that, whilst these may be reasonable arguments for the Bill conferring powers that allow some aspects of the regulatory regime for products to be provided for in delegated legislation, the Government have not explained why the Bill goes so much further and instead provides for almost all of the substance of that regulatory regime to be provided for by Ministers in regulations under the new powers, with little or nothing to be settled under the fuller scrutiny given to Bill provisions.

13 *19th Report* (Session 2019–21, HL Paper 109).

14 At para 20.

15 *11th Report* (Session 2022–23, HL Paper 66), para 44.

16 At para 38.

32. The concern with powers of this kind is that they give Ministers maximum flexibility to choose the direction that the law will take. Ministers could, should they so wish, use these powers as a mechanism for ensuring that UK domestic law on product regulation is completely aligned with EU law. Alternatively, they could use the powers to provide for UK domestic law to diverge in significant respects from EU law. Whatever direction Ministers may choose to take the law in - and however significant in policy terms that may be—it is to be done by means of delegated legislation that will be subject only to a relatively low level of parliamentary scrutiny.
33. The Memorandum also fails to explain why the exercise of the powers is unfettered by any requirements for consultation, for criteria to be met or for meaningful pre-conditions to be satisfied - and it fails to say whether this represents a divergence from the existing regulatory regime. We note with interest that at least one existing regulation-making power that the powers to make product regulations are designed to replace (the power of the Secretary of State under section 11 of the Consumer Protection Act 1987 to make “safety regulations” with respect to goods) is, unlike the new powers, subject to consultation requirements.

Power to set the ingredients of criminal offences

34. Clause 3(9)(a) is particularly worthy of mention. It provides that product regulations may create, or widen the scope of, criminal offences for such things as non-compliance with product regulations or obstruction of, or failure to assist or co-operate with, a product safety inspector.
35. Our Guidance for Departments on the role and requirements of the Committee states as follows¹⁷:

“Where the ingredients of a criminal offence are to be set by delegated legislation, the Committee would expect a compelling justification”.

The Memorandum explains¹⁸ why it considers the power in clause 3(9)(a) to be sufficiently significant to merit affirmative procedure scrutiny but it fails to provide a justification for taking the power in the first place.

36. **We consider that:**
- **the Government have failed to provide a convincing justification for the inclusion of skeleton clauses in the Bill that give Ministers such wide powers to re-write in regulations the substance of the regulatory regime for products; and**
 - **accordingly, the delegations of power in clauses 1, 2, 3 and 9 are inappropriate and should be removed from the Bill.**

Clauses 5, 6 and 9—powers to make metrology regulations

37. Clause 5 gives the Secretary of State power to make “metrology regulations”, about:

¹⁷ Guidance for Departments (November 2021), para 12: <https://committees.parliament.uk/publications/8225/documents/84262/default/>

¹⁸ At para 54.

- the units of measurement that are used to express quantities (whether of goods¹⁹ or other things), including how such units of measurement must or may be calculated;
 - the quantities in which goods must or may be marketed; and
 - the units of measurement that must or may be used to express such quantities.
38. Metrology regulations may impose requirements in relation to matters including:
- the marketing or packaging of goods;
 - the monitoring, assessment and verification of the quantities in which goods are marketed and the units of measurement used to express such quantities; and
 - the retention of documents and information.
39. Clause 6 makes provision with respect to the enforcement of metrology regulations. The provision made is identical in all material respects to that made in clause 3 with respect to the enforcement of product regulations.
40. Clause 9 provides that, in consequence of any provision made by the Bill or by metrology regulations, such regulations may repeal provision made by Parts 2, 4 and 5 of the Consumer Protection Act 1987, the Gun Barrel Proof Acts 1868 to 1978, section 77 of, and Schedule 5 to, the Consumer Rights Act 2015 and the Weights and Measures Act 1985.
41. The power to make metrology regulations is subject to the negative procedure save where it is exercised for purposes equivalent to those specified in paragraph 17 above with respect to the power to make product regulations.
42. Clauses 5, 6 and 9 are another example of “skeleton legislation”. They contain almost no substance about units of measurement and the quantities in which goods must or may be marketed. Instead, they confer very broad powers to make such provision by regulations.
43. We consider that the concerns set out above with respect to the powers to make product regulations apply equally to the powers to make metrology regulations, namely that:
- almost all of the substance is left to regulations;
 - skeleton legislation is only justifiable in the most exceptional circumstances and the Memorandum fails to provide the full justification that we expect where a Bill takes this approach;
 - the Memorandum fails to adequately explain the content—and significance in policy terms—of the existing legislation that could be amended and indeed replaced by metrology regulations;
 - this lack of explanation makes it difficult to understand the significance of the changes that the powers could be used to make, giving rise to uncertainty as to whether there may be aspects of the existing regulatory

19 “Goods” are broadly defined in clause 5(4) as “tangible items (including packaging or labels)”.

regime that the Bill leaves to be provided for in regulations which might be considered sufficiently important to merit inclusion in the Bill;

- the power to use metrology regulations to replace and repeal primary legislation merits a full explanation and a compelling justification but the Memorandum fails to provide this;
- the power to use metrology regulations to replace all aspects of the existing regulatory regime that are currently contained in assimilated law merits a full explanation and justification but the Memorandum fails to provide this;
- the Government argues that aspects of the regulatory regime may need to be updated swiftly and frequently but they have not explained why the Bill provides for almost all of the substance of that regime to be provided for in regulations, with little or nothing to be settled under the fuller scrutiny given to Bill provisions;
- the Memorandum fails to explain why the exercise of the powers is unfettered by any requirement for consultation, for criteria to be met or for meaningful pre-conditions to be satisfied; and
- the Memorandum fails to provide a justification for the power in clause 6(9)(a) to create, or widen the scope of, criminal offences.

44. **We consider that:**

- **the Government have failed to provide a convincing justification for the inclusion of skeleton clauses in the Bill that give Ministers such wide powers to re-write in regulations the substance of the regulatory regime for metrology; and**
- **accordingly, the delegations of power in clauses 5, 6 and 9 are inappropriate and should be removed from the Bill.**

WATER (SPECIAL MEASURES) BILL [HL]

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

PROPERTY (DIGITAL ASSETS ETC) BILL [HL]

46. This Bill contains no delegations of legislative power.

ASYLUM SUPPORT (PRESCRIBED PERIOD) BILL [HL]

47. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

CONSUMER PRODUCTS (CONTROL OF BIOCIDES) BILL [HL]

48. There is nothing in the private member's Bill which we would wish to draw to the attention of the House.

EDUCATION (ASSEMBLIES) BILL [HL]

49. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

ENVIRONMENTAL TARGETS (PUBLIC AUTHORITIES) BILL [HL]

50. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

MORTGAGE PRISONERS INQUIRY BILL [HL]

51. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

PUBLIC AUTHORITY ALGORITHMIC AND AUTOMATED DECISION-MAKING SYSTEMS BILL [HL]

52. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

REFUGEES (FAMILY REUNION) BILL [HL]

53. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

UNIVERSAL CREDIT (STANDARD ALLOWANCE ENTITLEMENT OF CARE LEAVERS) BILL [HL]

54. There is nothing in this private member's Bill which we would wish to draw to the attention of the House.

**COMPLICATIONS FROM ABORTIONS (ANNUAL REPORT)
BILL [HL]**

55. This private member's Bill contains no delegations of legislative power.

**IMPRISONMENT FOR PUBLIC PROTECTION (RE-
SENTENCING) BILL [HL]**

56. This private member's Bill contains no delegations of legislative power.

**LISTED INVESTMENT COMPANIES (CLASSIFICATION ETC)
BILL [HL]**

57. This private member's Bill contains no delegations of legislative power.

**NON-CONSENSUAL SEXUALLY EXPLICIT IMAGES AND
VIDEOS (OFFENCES) BILL [HL]**

58. This private member's Bill contains no delegations of legislative power.

PALESTINE STATEHOOD (RECOGNITION) BILL [HL]

59. This private member's Bill contains no delegations of legislative power.

WOMEN, PEACE AND SECURITY BILL [HL]

60. This private member's Bill contains no delegations of legislative power.

APPENDIX 1: MEMBER'S 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.

Attendance

The meeting was attended by:

Lord Carlile of Berriew, Baroness Chakrabarti, Baroness Finlay of Llandaff, Lord Goodman of Wycombe, the Earl of Lindsay, Lord McLoughlin (Chair) and Lord Rooker.

Declarations of interest

For the business taken at the meeting on 9 October 2024, Members declared the following interests:

Lord Carlile of Berriew

No relevant interests to declare

Baroness Chakrabarti

No relevant interests to declare

Baroness Finlay of Llandaff

Ex-member of the stakeholder board for First Great Western

Lord Goodman of Wycombe

No relevant interests to declare

Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

President, Chartered Trading Standards Institute (CTSI)

Lord McLoughlin (Chairman)

Chair, Transport for North

Lord Rooker

No relevant interests to declare