



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

7th Report of Session 2024–25

**Home School Education
Registration and Support
Bill [HL]**

Great British Energy 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 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 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.

Seventh Report

PRIVATE MEMBERS' BILLS: INTRODUCTORY NOTE

1. This report sets out the Committee's observations in relation to a private member's Bill. It has long been, and remains, the Committee's approach to apply the same exacting standards of scrutiny to all bills, whether a government bill or a private member's bill. We acknowledge however that those members of the House who sponsor private members' bills, unlike ministers, do not have the support of departmental officials and Parliamentary Counsel in the preparation of their bills. Our comments on private members' bills are framed in the light of that understanding.

HOME SCHOOL EDUCATION REGISTRATION AND SUPPORT BILL [HL]

2. This private members' bill requires local authorities in England to maintain a register of children who are receiving education otherwise than at school. It also makes provision about the content of the register; the information which parents and providers of such education are to provide to the local authority; and the requirements imposed on local authorities to provide information to the Secretary of State and others, and to support parents of children who are included in the register. The Bill to a very large extent replicates earlier provisions contained in the Schools Bill from the 2022–23 Session, which were never enacted. The Bill, in the same way as the earlier Schools Bill, works by inserting new sections 436B to 436G and Schedule 31A into the Education Act 1996.
3. Five of the delegated powers conferred by the Bill are subject to what is commonly referred to as the first-time affirmative procedure. In our guidance to Departments,¹ we require that:

“where the chosen procedure is first-time affirmative, the memorandum fully explains why the negative procedure is thought to afford adequate scrutiny on subsequent exercises of the power, and on what that prediction is based, bearing in mind that the power will remain exercisable by future governments”.

Underlying this is our view that any assessment of a delegated power must be based on the scope of the power and not on what the Government say their current intentions are as to its exercise. Governments change, and therefore so may government policy with respect to how a power is exercised.

4. Since this is a private member's bill there is no delegated powers memorandum, and therefore we have been given no explanation as to why in each case the first-time affirmative is considered appropriate. **In the circumstances, we recommend that the House seeks an explanation from the promoter of the Bill as to why the first-time affirmative procedure is considered appropriate in each of the cases in which it is used.**

¹ See paragraph 20 of the Committee's Guidance to Departments (December 2023): <https://committees.parliament.uk/publications/42694/documents/212126/default/>

5. In the following paragraphs, we draw attention to three of the provisions which are subject to the first-time affirmative procedure, where we do not consider that level of scrutiny to be appropriate.

Section 436B(6)—Power affecting the scope of the registration duty

6. Section 436B, which is being inserted by clause 1, sets out the conditions which must be met by a child for the local authority to be required to include information about the child on the register to be established by the Bill. Those conditions are that:

- the child is in the authority’s area,
- the child is of compulsory school age, and
- either:
 - the child is not a registered pupil at a relevant school,² or
 - *the child is a registered pupil, but under arrangements agreed with the school is absent for some or all of the time to receive education otherwise than at the school.*

7. Subsection (6) of section 436B confers a regulation making power which may be exercised for the following two purposes:

- to provide for a child to be treated as falling, or not falling, within the scope of the highlighted condition set out in the preceding paragraph; or
- to provide for a child who does fall within that condition not to be regarded as eligible for registration.

8. In our view, this is a significant power because it enables the Secretary of State to exclude children from registration where they fall within the relevant condition, and to require others to be included on the register even though they fall outside the scope of the relevant condition. **Given that there is nothing to prevent significant changes being made on subsequent exercises of the power, we consider that the affirmative procedure should apply to all exercises of the power.**

Section 436E(8)—Power to determine the amount of a monetary penalty

9. Section 436E confers powers on local authorities to require persons, whom the authority believes are providing out of school education to a child without a parent being present, to provide certain kinds of information to the authority. The section works by enabling local authorities to serve a notice on the person requiring them to provide the relevant information, with the ability to impose a monetary penalty if the person fails to comply with the notice.
10. The amount of the monetary penalty is not specified on the face of the Bill but is left to the Secretary of State to specify in regulations. There is nothing on the face of the Bill to limit the amount of the penalty which may be set out in the regulations. **In our view, where, as in this case, a bill allows a**

² See section 436B(7) for the definition of “relevant school”.

financial penalty to be imposed, the maximum amount that a person is liable to pay should be set out on the face of the bill. If it is necessary for there to be a power to vary that amount by regulations, then that power should be subject to the affirmative procedure in respect of all exercises of the power.

Paragraph 5 of Schedule 31A—Power to increase a monetary penalty as a result of late payment

11. Schedule 31A contains further provisions relating to monetary penalties under section 436E. Paragraph 5 of the Schedule allows the monetary penalty to be increased where the person fails to pay the penalty within the time specified in the penalty notice. The percentage amount of the increase is left to the Secretary of State to specify in regulations. **We consider the affirmative procedure to be appropriate as there is no limit on the amount of the percentage increase which may be specified in the regulations. Since there is nothing to limit the scale of the change which may be made on subsequent exercises of the power, we consider that the affirmative procedure should apply to all exercises of the power.**

GREAT BRITISH ENERGY BILL

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

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 6 November 2024, Members declared no interests.

Attendance

The meeting was attended by Baroness Bakewell of Hardington, Lord Carlile of Berriew, Baroness Chakrabarti, Lord Goodman, Baroness Humphreys, Earl of Lindsay, Lord McLoughlin and Lord Rooker.