



HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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44th Report of Session 2024–26

# Children’s Wellbeing and Schools Bill: Government Response

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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 Hall of Birkenhead

Baroness Chakrabarti

Baroness Humphreys

Baroness Finlay of Llandaff

The Earl of Lindsay

Lord Goodman of Wycombe

Baroness Ramsey of Wall Heath (Chair)

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### *Publications*

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### *Committee Staff*

The staff of the Committee are Joey Topping (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](mailto:hldelegatedpowers@parliament.uk).

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# Forty-fourth report

## CHILDREN'S WELLBEING AND SCHOOLS BILL: GOVERNMENT RESPONSE

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1. We considered this Bill in our 21st report of the current session.<sup>1</sup> The Government have responded by way of a letter from The Rt Hon. the Baroness Jacqui Smith, Minister for Skills for the Department for Education. The response is printed at Appendix 1.

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1 DPRRC, *21st Report* (Session 2024–26, HL Paper 112)

## APPENDIX 1: CHILDREN'S WELLBEING AND SCHOOLS BILL: GOVERNMENT RESPONSE

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Letter from The Rt Hon. the Baroness Jacqui Smith, Minister for Skills for the Department for Education to The Baroness Ramsey of Wall Heath, Chair of the Delegated Powers and Regulatory Reform Committee.

Following my letter dated 13 May 2025, this letter includes a full response to recommendations in the Committee's 21st Report of Session 2024-25 on the Children's Wellbeing and Schools Bill and seeks the Committee's views on delegated powers in a number of proposed Government Amendments at Lords Report stage. I would like to thank you and the Committee for your report and your ongoing careful consideration of this Bill.

### **Department for Education response to The Delegated Powers and Regulatory Reform Committee's Twenty First Report, into the Children's Wellbeing and Schools Bill**

Your report includes six recommendations across three clauses. I will take each in turn.

#### ***Recommendation 1. Clause 11 – Use of accommodation for deprivation of liberty.***

*'Accordingly, we consider that the extension of the powers conferred by section 25(2) and (7) to relevant accommodation should be subject to the draft affirmative resolution procedure; and that, if the Department believes that it is important to maintain consistency, then this should be achieved by increasing the level of scrutiny which applies to the existing powers.'*

Given the points put forward by the Committee, we are content with changing the powers conferred by section 25(2) and (7) to relevant accommodation so they are subject to the affirmative procedure. We are also content with applying this to existing powers. We have tabled government amendments at Report stage in the Lords accordingly.

#### ***Recommendation 2. Clause 24 – Corporate parenting, duty to have regard to guidance.***

*'Accordingly, we recommend that the guidance is made subject to parliamentary scrutiny, with the draft negative procedure offering an appropriate level of scrutiny.'*

While noting your comments, we do not accept this recommendation. The guidance conferred by this power will not set out additional requirements on corporate parents and therefore we do not agree that it is quasi-legislative in nature. Instead, it will give guidance and support to corporate parents to help them to understand how they may discharge the duty, including providing examples and/or case studies. Furthermore, corporate parents will be free to depart from the guidance where there is a good reason to do so. We therefore have not taken forward government amendments on this matter.

#### ***Recommendation 3. Clause 32 (was clause 31) – Registration of children not in school.***

*'In the circumstances we remain of the view that the powers should be subject to the affirmative resolution procedure in respect of all exercises of the power.'*

Given the points put forward by the Committee, we are content with changing the powers conferred by section 436B(6), powers with respect to the scope of the registration duty, so they are subject to the affirmative procedure in every instance,

not just the first time they are used. We have tabled government amendments at Report stage in the Lords accordingly.

***Recommendation 4. Clause 32 (was clause 31) – Registration of children not in school.***

*Again, we do not consider these reasons to be persuasive and remain of the view that where, a bill allows a 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 the amount by regulations, then it should be subject to the affirmative procedure in respect of all exercises of the power.'*

We remain of the view that the financial penalty is to be set out in regulations, not on the face of the Bill. Our justification remains as set out in the Bill's Delegated Powers Memorandum, that this is to allow for changes to be made for economic reasons (e.g., to account for inflation) and having experience of the system in operation (i.e., improved learning about effectiveness of size of penalty). There is precedent of regulations being used to set monetary penalties. We note that the DPRRC itself acknowledged that, "*If it is necessary for there to be a power to vary the amount by regulations, then it should be subject to the affirmative procedure in respect of all exercises of the power*".

We are content with changing the powers conferred by section 436E(9), powers to determine the amount of a monetary penalty, so they are subject to the affirmative procedure in every instance, not just the first time they are used. We have tabled government amendments at Report stage in the Lords accordingly.

***Recommendation 5. Clause 32 (was clause 31) – Registration of children not in school.***

*Accordingly, we remain of the view that the power should be subject to the affirmative procedure in respect of all exercises of the power.'*

We are content with changing the powers conferred by paragraph 5 of schedule 31A, power to increase the monetary penalty as a result of late payment, so it is subject to the affirmative procedure in every instance, not just the first time it is used. We have tabled government amendments at Report stage in the Lords accordingly.

***Recommendation 6. Clause 46 (was clause 45) – Teacher misconduct.***

*In the circumstances, we consider that the Department has failed adequately to explain why it is necessary to have the power to change the relevant conditions; and that accordingly section 141AA(6) should be amended to prevent the power being used to make changes to the three conditions set out in section 141AA(2) to (4).'*

We remain of the view that each of the four conditions that define an online education provider may need to be amended in future to ensure the definition of online education providers remains accurate. Online education is continuously evolving and, as we continue to develop our understanding of this policy area, our position in relation to what it is necessary to regulate may also change.

The four conditions that define an online education provider on the face of the bill are taken from the criteria for the Department's online education accreditation scheme (the OEAS). The OEAS is due to be evaluated in 2026, so changes to the criteria that underpinned the four conditions may need to be changed.

Whilst the criteria were designed following a public consultation, this was informed by what was known about online education providers *at that time* and not

to serve the purpose of providing a future-proofed definition of online education provider. Rather, the purpose of the accreditation scheme was to incentivise online education providers to meet high standards of education and care for their students and the scheme only captures a very small number of providers in what is a rapidly-developing area.

Conversely, the type of online education that it is in the public interest to regulate – and therefore how to define online education provision – may look different in the future. There could be changes to how online education providers are defined across *all four* of the conditions in section 141AA(2) to (5), and as such, we are of the view that the regulation-making power needs to apply to all of them. Examples include:

- (a) whether overseas or other UK providers should be in scope (relevant to condition one in 141AA(2)),
- (b) whether the age range selected was right (relevant to condition two in 141AA(3))
- (c) whether those offering part-time provision or asynchronous learning should be in scope (relevant to condition three in 141AA(4)),
- (d) whether supplementary providers of online education should be in scope (relevant to condition one in 141AA(5)).

In summary, we remain of the view that the online sector is likely to develop and change over the next few years, and therefore future governments may want to regulate these settings in a way that is different and in accordance with emerging evidence and their policy position at that time.

7 January 2026

## APPENDIX 2: MEMBERS' INTERESTS

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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.

For the business taken at the meeting on 23 April 2025, the following interests were declared:

Baroness Finlay of Llandaff  
*Associate of the Girls' Day School Trust*  
Baroness Ramsey of Wall Heath  
*Trustee of a multi-academy trust*

On 8 January 2026, the following interest was declared:

Baroness Finlay of Llandaff  
*Tabled an amendment to the Bill*