

HOUSE OF LORDS

Delegated Powers & Regulatory Reform Committee

7th Report of Session 2007-08

European Union (Amendment) Bill

Immigration (Discharged Gurkhas) Bill [HL]

Iraq War Inquiry Bill [HL]

Government amendments

Children and Young Persons Bill [HL]

Ordered to be printed 26 March and published 27 March 2008

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 88

The Delegated Powers and Regulatory Reform Committee

The House of Lords appoints the Committee each session with the terms of reference “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; to report on documents and draft orders laid before Parliament under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006; 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”.

Membership

The members of the Delegated Powers and Regulatory Reform Committee are:

The Lord Armstrong of Ilminster GCB CVO
Rt Hon. the Lord Boyd of Duncansby PC QC
The Lord Brett
The Viscount Eccles CBE
The Lord Faulkner of Worcester
The Baroness Fritchie DBE
The Baroness Gardner of Parkes
The Lord Goodhart QC (*Chairman*)
The Lord Razzall CBE
The Lord Shaw of Northstead DL

Registered interests

Members’ registered interests may be examined in the online Register of Lords’ Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Publications

The Committee’s reports are published by the Stationery Office by Order of the House in hard copy and on the internet at www.parliament.uk/parliamentary_committees/dpr.cfm.

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 www.parliament.uk/about_lords/about_lords.cfm.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of the Delegated Powers and Regulatory Reform Committee, Delegated Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020-7219 3103 and the fax number is 020-7219 2571. The Committee’s email address is dpr@parliament.uk.

History

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended setting up a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. After the enactment of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act and the Committee became the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 expanded the order-making power to include regulatory reform and the Committee, renamed the Delegated Powers and Regulatory Reform Committee, took on the scrutiny of regulatory reform proposals under that Act. The Committee now scrutinises legislative reform orders under the successor to the 2001 Act, the Legislative and Regulatory Reform Act 2006.

Seventh Report

EUROPEAN UNION (AMENDMENT) BILL

1. This bill makes provision in connection with the United Kingdom's ratification of the Treaty (signed in Lisbon in December 2007) amending, in particular, the Treaty on the European Union and the Treaty Establishing the European Community. The Foreign and Commonwealth Office has prepared a memorandum, printed at Appendix 1, explaining the two delegated powers in the bill.
2. As the department explains in its memorandum, provisions of the Lisbon Treaty effect changes to terminology and numbering in those earlier treaties, which require consequential changes in UK legislation. Clause 3(4) enables the amendment by negative order of primary and subordinate legislation (to reflect changes in terminology or numbering arising out of the Lisbon Treaty), supplementing the amendments made by clause 3 itself. The Schedule to the bill affords an example of the kinds of changes to terminology which are likely to be made. This is a Henry VIII power, but its scope is narrowly confined to two specific kinds of consequential amendment. We consider neither the delegation nor the level of scrutiny to be inappropriate.

IMMIGRATION (DISCHARGED GURKHAS) BILL [HL]

3. This private member's bill does not delegate legislative power.

IRAQ WAR INQUIRY BILL [HL]

4. This private member's bill does not delegate legislative power.

CHILDREN AND YOUNG PERSONS BILL [HL] — GOVERNMENT AMENDMENTS

5. We reported on this bill in our 2nd Report (HL Paper 21) and published the Government's response in our 4th Report (HL Paper 49). The Government have now invited us to consider amendments to be moved on Report, printed on sheet HL Bill 32(7) and now agreed to. The Department for Children, Schools and Families have provided a supplementary memorandum on the amendments, printed at Appendix 2. There is nothing in the delegation in the amendments which we wish to draw to the attention of the House.

APPENDIX 1: EUROPEAN UNION (AMENDMENT) BILL

Memorandum by the Foreign and Commonwealth Office

1. This Memorandum describes the purpose and content of the European Union (Amendment) Bill, and explains why powers have been included to make delegated legislation and the nature of, and reason for, the procedure selected for the exercise of these powers.

Background and purpose of the Bill

2. The Bill will amend the European Communities Act 1972 and thereby enable the United Kingdom to ratify the Lisbon Treaty amending the Treaty on European Union and the Treaty Establishing the European Community (“the Lisbon Treaty”). The Lisbon Treaty was signed on behalf of the United Kingdom on 13 December 2007. The main provisions of the Bill will –
 - amend section 1 of the European Communities Act 1972, by adding the Lisbon Treaty to the list of treaties set out in section 1(2), with the exception of those provisions of the Treaty that concern the European Union’s Common Foreign and Security Policy;
 - make, and provide power to make, changes in Acts and instruments made under an Act in consequence of the changes made by the Lisbon Treaty affecting terminology;
 - record Parliament’s approval of the increase in the powers of the European Parliament, as provided for in section 12 of the European Parliamentary Elections Act 2002;
 - provide that any future treaty amending the principal EU Treaties must be approved by Act of Parliament before the United Kingdom may ratify it;
 - provide that, where a draft EU decision is proposed under certain listed Treaty provisions, the vote of the United Kingdom may not be cast in favour of adopting the decision, unless Parliamentary approval has first been given.
3. The Bill includes one power to make subordinate legislation, in subsections (4) and (5) of clause 3.

Clause 2: Changes of terminology

4. Article 1(2)(b) of the Lisbon Treaty inserts in Article 1 of the Treaty on the European Union (TEU) a new third paragraph as follows:

The [European] Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as “the Treaties”). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

5. The Lisbon Treaty amends other provisions of the TEU and of the Treaty establishing the European Community, which it renames as the Treaty on the Functioning of the European Union (TFEU).

6. The Lisbon Treaty also makes large-scale changes in the numbering of the articles in the TEU and the TFEU. Article 5 of the Treaty and the Annex to which it refers provide for the renumbering in accordance with a table of equivalences.
7. Clause 2 makes general provision to reflect the consequent changes in terminology.
 - A definition of “the EU” is added in the European Communities Act 1972 (subsection (1)).
 - References to the EU in an Act or an instrument made under an Act are to include reference to the European Atomic Energy Community (Euratom) where the context either permits or requires such an interpretation (subsection (2)).
 - References in an Act, or an instrument made under an Act, to the original Communities – the European Community, the European Coal and Steel Community or Euratom - or to those European Communities collectively, are to be treated as referring to the EU, or as including a reference to the EU, as the case may require (subsection (6)).
 - The Schedule, which sets out substitutions of terminology in the European Communities Act 1972 and the Interpretation Act 1978, is introduced by subsection (3).

Power to make other amendments as to terminology

Powers conferred on: the Secretary of State or the Treasury

Power exercisable by: order

Parliamentary procedure: negative resolution

8. Subsections 3(4) and (5) enable the Secretary of State or Treasury to modify Acts or instruments made under Acts to “reflect changes in terminology or numbering” arising from the provisions of the Lisbon Treaty. This power is included since it would be impracticable to seek to include in the Bill all the modifications which may be necessary to adapt legislation to take account of changes in terminology and the numbering of articles in the Treaties.
9. The scope of the power is limited to making amendments in order to reflect changes, that arise from the Lisbon Treaty, in terminology or numbering – ie. not to make changes of substance. The reference in clause 2(4) to “other amendments” relates back to subsection (3) and the Schedule which sets out amendments of terminology in the European Communities Act 1972 and in the Interpretation Act 1978.
10. It was possible to include the amendments in subsection (3) and the Schedule in the Bill. They illustrate the type of amendment contemplated by the order-making power.
11. An order made under the power may include incidental provision – clause 2(5)(a). The ambit of that aspect of the power is limited by the general limitation as to scope.
12. The Department considers that the Negative Resolution procedure is appropriate, notwithstanding the fact that the power may be used to amend primary legislation, having regard to the limited scope of the power. Parliament’s ability to scrutinise the provisions made under the power is not removed, but the power is to deal with

matters with which the Department considers Parliament would not expect to be burdened, other than exceptionally.

Power to make provision for entry into force of Clause 3 (and Schedule)

Powers conferred on: Secretary of State

Power exercisable by: order

Parliamentary procedure: none

13. Subsection (1) of Clause 8 enables the Secretary of State to provide by order made by statutory instrument for Section 3 (and the Schedule) to come into force. Under subsection (3), the other provisions of the Act come into force on Royal Assent. It would not however be appropriate for provisions amending existing United Kingdom legislation to reflect changes in terminology made by the Lisbon Treaty to come into force prior to entry into force of the Lisbon Treaty itself. This power will enable these provisions to be brought into force at the same time as the Lisbon Treaty.
14. Subsection (2) of Clause 8 provides that an order made under subsection (1) may make provision generally or for specified purposes only; may make different provision for different purposes; and may include incidental, transitional and consequential provision.
15. This flexibility may be needed were it necessary, for example, to bring into force the order-making power in subsection 4 of Clause 3 earlier than the other provisions of that Clause. It might also be necessary, for example, to make different provision for different purposes where the legislation to which Clause 3 is to be applied contains different texts for different purposes.

Foreign and Commonwealth Office

March 2008

APPENDIX 2: CHILDREN AND YOUNG PERSONS BILL [HL] — GOVERNMENT AMENDMENTS

Supplementary memorandum by the Department for Children, Schools and Families

1. This supplementary memorandum is to accompany the tabling of a small number of minor Government amendments to the Children and Young Persons Bill ahead of Report stage. The amendments are attached at Annex A (*Not printed*).
2. Amendments 1, 3 and 5 are consequential to those which were included in the supplementary memorandum to the committee of the 8 February, the substitution of new sections 22A-22F for section 23 of the Children Act 1989 by clause 8 of the Bill, and the new sections 25A and 25B inserted by clause 9 of the Bill.
3. The opportunity has also been taken to change the references to the Secretary of State to reflect the devolution settlement (amendments 2 and 4). This is in line with the similar amendments to Part 3 of the Children Act 1989 made by this Bill, and makes it clear where powers are now exercised by Welsh Ministers in relation to Wales rather than by the Secretary of State.

Section 59 Amendments

Powers conferred on: Secretary of State and Welsh Ministers

Powers exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

4. Section 59 of the Children Act 1989 sets out the duties to which voluntary organisations are subject when providing accommodation for looked after children. It contains a number of regulation making powers which are framed with reference to (with any necessary modifications) the powers in section 23 (which concerns the way in which local authorities provide accommodation for looked after children).
5. Amendment 1 (6) inserts new subsection (3A) in section 59, replicating the effect of the existing provisions section 59 (2) and (3) (amended by amendment 1 (4) and (5)) by changing the references to the relevant new paragraphs (12B, 12E and 12F) of Schedule 2, which provide more detail regarding the ambit of the regulation-making powers under new *section 22C* (by virtue of new section 22F). These replicate the powers under which the Arrangements for Placement of Children (General) Regulations 1991, (SI 1991/890), the Fostering Services Regulations 2002, (SI 2002/57) were made in relation to placements made either by local authorities or by voluntary organisations.
6. Existing section 59 (4) and (5) provide for regulations to be made relating to the review of the cases of children placed by voluntary organisations, and consideration of representations (including complaints), and provides that this can include, with any necessary modifications, any provision which is similar to that made under section 26 of the Children Act 1989.

7. Currently all local authorities are required by regulations made under section 26 (1) and (2) of the Children Act 1989¹ to carry out regular reviews of the cases of looked after children. In addition under section 26(2) (k) they must appoint an IRO to:
 - participate in the review;
 - monitor the performance of the authority's functions in respect of the review; and
 - refer the child's case to a CAFCASS officer (or, in Wales, a Welsh family proceedings officer) if they consider it appropriate to do so.
8. The Bill through Clause 9 replaces section 26 (2) (k) and (2A) to (2D) of the Children Act 1989 with new sections 25A to 25C and builds on these requirements relating to the appointment of IROs and their functions. The extract from the original memorandum which covered the delegated powers for this clause (clause 11 on introduction) is included as Annex B for convenience.
9. These changes ensure that the Secretary of State can continue to require voluntary organisations to appoint Independent Reviewing Officers for children they place (currently addressed through the Review of Children Cases Regulations 1991) by providing for new sections 25A and 25B to be applied with appropriate modifications by new subsection 5A (a) of section 59. The Department recognises that this is a Henry VIII power, but given the limited scope of the sections and the fact that it broadly replicates existing powers the Department believes that is appropriate for this to be subject to the negative procedure.
10. New subsection (5A) (b) provides for a regulation making power that is similar to the existing subsection (5) with the additional references to 25A and 25B to cover the Independent Reviewing Officer functions, to allow for similar provision to be made in regulations as now with respect to Independent Reviewing Officers appointed by voluntary organisations (the requirement to appoint being made via new subsection (5A) (a) described above). The Department considers that it is appropriate for exercise of these powers, which concern the detailed matters similar to existing provisions, to be subject to the negative procedure.
11. Finally, the Department apologises for the slight delay in the submitting of this memorandum to the committee, and hope that it has caused the minimum inconvenience for the committee.

Department for Children, Schools and Families

March 2008

¹ The Review of Children's Cases Regulations 1991 (SI1991/895) in relation to England, as amended and the Review of Children's Cases (Wales) Regulations 2007 (SI2007/307) in relation to Wales