



In Focus

Delegated Legislation in the House of Lords

Overview

The [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#) (2015) summarises the general powers the House of Lords has in relation to delegated legislation (also known as secondary legislation or as statutory instruments):

The Parliament Acts do not apply to delegated legislation. So delegated legislation rejected by the Lords cannot have effect even if the Commons have approved it. Neither House of Parliament has the power to amend delegated legislation. The House of Lords has only occasionally rejected delegated legislation. [...]The House has resolved “That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration”.¹

Except in very limited circumstances, delegated legislation cannot be amended, and so it must be either rejected or approved. There have been 88 divisions on delegated legislation since the beginning on the 1997/98 session. Some of these have been attempts to reject the legislation (fatal), some have been placing on record concerns about the policy (non-fatal).

Fatal Motions

Having made their point on the record Members often withdraw a fatal motion, but of the 32 divisions on fatal amendments since 1997 only four divisions have resulted in a Government defeat (as at 22 October 2015).

- **Defeats on Greater London Authority Elections Orders (2000):** the Greater London Authority (Election Expenses) Order was defeated by 215 votes to 150. The Greater London Authority Elections Rules Order was defeated by 206 votes to 143.
- **Defeat on the draft Gambling (Geographical Distribution of Casino Premises Licences) Order (2007)** Lord Clement-Jones (Liberal Democrat) moved a fatal amendment to the motion to approve the order which was carried by 123 votes to 120.
- **Defeat on the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012.** Lord Bach (Labour) moved an amendment to the motion, declining to approve the draft Order which was carried by 201 votes to 191.

Non-Fatal Motions

The House has also sought to utilise the non-fatal procedures available, that is “regret” or “take note” motions, to place on record its concerns with an instrument or a particular aspect of an instrument, whilst stopping short of rejecting it altogether. These are primarily on negative instruments which Members would not otherwise have an opportunity to debate; affirmative instruments must always be debated. Since 1997 there have been divisions on 56 non-fatal amendments resulting in 19 Government defeats.

Defeats and divisions on delegated legislation should be considered in the context of the volume of delegated legislation. The [Secondary Legislation Scrutiny Committee](#) considers the policy merits of all statutory instruments and other types of secondary legislation subject to parliamentary procedure; its weekly reports draws to the attention of the House any that it considers to be either interesting or flawed. Between 2010/12 –2014/15 the Committee considered over 4000 statutory instruments.

Session	Instruments considered by SLSC	Divisions		Government Defeats	
		Fatal	Non-Fatal	Fatal	Non-Fatal
2010–12 Double session	1147	1	7	0	0
2012–13	893	2	7	1	3
2013–14	998	0	2	0	0
2014–15	1153	1	1	0	0

If, in either House, a fatal motion on an affirmative instrument is successful that instrument cannot be made law, if a fatal motion on a negative instrument is successful no further proceedings may be taken under that instrument after the date of the resolution. However, if a statutory instrument is defeated, an affirmative may be re-laid in a slightly different form, and a negative may be re-laid with a new title. If the Lords rejected either again (which has never happened), the Government could in the last resort embody it in a Bill.²

Further Information

- House of Commons Library, [House of Commons Background Paper: Statutory Instruments](#), 18 December 2012, SN/PC/6509
- House of Lords Library, [Delegated Legislation in the House of Lords since 2000](#), 10 April 2012 LLN 2012/012
- [Secondary Legislation Scrutiny Committee website](#), accessed 22 October 2015
- Hansard Society, [The Devil is in the Detail: Parliament and Delegated Legislation](#), November 2014

¹ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, p 198.

² Joint Committee on Conventions, [Conventions of the UK Parliament](#), November 2006, HL Paper 265-1 of session 2005–06, p 60.

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