

SPACE INDUSTRY BILL

DELEGATED POWERS MEMORANDUM BY THE DEPARTMENT FOR TRANSPORT

Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Space Industry Bill (“the Bill”) published on 27 June 2017. The memorandum has been prepared by the Department for Transport (“the Department”) but with substantial input from the Department for Business, Energy and Industrial Strategy. It identifies the provisions of the Bill that confer powers to make delegated legislation and explains in each case why the power has been taken and explains the nature of, and reason for, the procedure selected.
2. The Bill contains 100 individual provisions containing delegated powers, one of which is a Henry VIII power.
3. In the light of this, delegated powers are grouped together as appropriate and schedules are addressed at the same time as the clauses which give effect to them.
4. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

Overview of the Bill

5. The Bill contains 71 Clauses and 12 Schedules. The delegated powers in the Bill will enable detailed regulation to be developed with the benefit of effective consultation and impact assessments. Secondary legislation is necessary because the commercial spaceflight environment is innovative, highly technical and fast-changing and it is important to have the flexibility given by secondary legislation to adapt to keep pace with this emerging market as both the UK regulators and the space industry build experience in this area.
6. The main delegated powers provide for the making of regulations in relation to:
 - a) Licensing of space, and sub-orbital activities (including exemptions from the licensing requirement)
 - b) Licensing of spaceports
 - c) Range, licensing of range control service providers and provision of range control services
 - d) Licence conditions
 - e) Power of Secretary of State to appoint a regulator to exercise functions
 - f) Individuals taking part in spaceflight activities
 - g) Security, safety, protection of environment and compliance with international obligations
 - h) Creation of offences and defences in connection with provision made about the matters listed above
 - i) Civil sanctions

- j) Enforcement
- k) Appeals
- l) Liabilities, indemnities and insurance
- m) Rights and controls over land
- n) Charging schemes

7. There is a Henry VIII power set out in clause 66 to make consequential provision in regulations which may amend, repeal or revoke any enactment passed or made before the Bill or in the same Session.

8. The Department has tried to ensure that the powers in the Bill are as narrow as possible by setting out in the primary legislation as much of the detail to be provided in secondary legislation as can be known at this stage. The Department has also reviewed the delegated powers following informal scrutiny conducted by the DPRCC of an earlier draft.

9. While we will not be in a position to provide draft regulations at introduction, it is our intention to consult on both overarching policy and on detailed content before regulations are brought before Parliament. We will be providing briefings to explain why this is the case.

DELEGATED POWERS

General justification

10. Notwithstanding the specific justification for individual powers below, there is some general context which is relevant overall. The Bill sets out the regulatory framework for a novel, dynamic and diverse industry, accommodating a range of different technologies. These encompass conventional vertical launch rockets; horizontal launch spaceplanes and the operation of space objects ranging from very small satellites the size of a coffee mug to much larger objects the size of a double decker bus. The Bill aims to provide sufficient certainty and assurance to Parliament, regulators, industry and the general public, whilst simultaneously having the flexibility to allow industry to grow. Early feedback from industry is that this flexibility is seen as vital. A rigid, approach, that offers limited opportunity to keep pace either with the development of spaceflight, or with the enhanced experience of the regulators, would be restricting for this sector.

11. In addition, the experience of other comparable sectors, like aviation, is that there is a need for development of a large number of detailed technical rules and these are constantly amended to reflect scientific and technical progress. The Department proposes that under the circumstances it would not necessarily be the best use of parliamentary time to scrutinise each minor and technical amendment to the rules in primary legislation, which is why we are proposing the powers to make the provision in secondary legislation along with powers to give directions e.g. to ensure safety, security and compliance with international obligations, with the relevant scrutiny associated with them.

12. While there will be some regulations in common for all kinds of spaceflight activity, it will be necessary to have different provisions for different kinds of launch operations (sub-orbital spaceplanes, rockets launching satellites etc.). This would add to the length and complexity of the

primary legislation, without the use of delegated powers to ensure a proportionate approach.

13. We have also noted concerns of the DPRRC in their report to the Science and Technology Committee dated 5 April 2017 on the Draft Spaceflight Bill published on 21 February 2017 and endeavoured to respond to these. A key concern of the Committee was that some powers dealing with matters of significant public interest (such as safety and security) were subject to the negative resolution procedure. However, switching these to affirmative procedure in all cases could take up a disproportionate amount of parliamentary time and might discourage timely updating because of difficulties in securing parliamentary debates. Therefore, there are now a number of delegated powers for which the Department has proposed the compromise of a “first use affirmative” procedure with the negative procedure thereafter. There are recent precedents for this in the Childcare Act 2016, section 4(4) and (5), Finance Act 2016, section 183(9); the Childcare Payments Act 2014, section 70(1) and (2), and the Marriage (Same Sex Couples) Act 2013, section 18(2)(b).

Powers to provide guidance

Powers conferred on: Secretary of State and the regulator (if not the Secretary of State)

Power exercisable by: Guidance

Parliamentary procedure: None

Clause 7(7) The regulator may issue guidance about the how the holder of a range control licence may comply with any safety requirements imposed by regulations under subsection (6) of clause 7.

Clause 9(7) The Secretary of State or the regulator (if not the Secretary of State) may issue guidance about how an applicant for licence to carry out space activities or sub-orbital activities (an “operator licence”) may satisfy the requirement for a risk assessment set out in clause 9(2) to (4).

Clause 9(8) The Secretary of State may issue guidance to the regulator (if not the Secretary of State) about the exercise of functions under clause 9.

Clause 17(3) The regulator may issue guidance concerning compliance with requirements imposed by training regulations (regulations on training, qualifications and medical fitness of individuals).

Clause 18(3) The regulator may issue guidance concerning compliance with safety requirements imposed by regulations.

Clause 22(3) The Secretary of State may issue guidance concerning compliance with the security requirements imposed by regulations.

Clause 58(4) and (5) The regulator must comply with the requirements relating to guidance set out in section 63 of the Regulatory Enforcement and Sanctions Act 2008 where the powers to make regulations under clause 58(2) are exercised.

Context and purpose

14. The Department considers it helpful to provide guidance material to supplement secondary legislation imposing detailed requirements. In practice guidance is likely to be needed for on-going aspects of the operations. To put this into context it is worth noting the comment on the website of EASA¹:

15. *“The complexity of the aviation sector makes it impossible to regulate aviation without having different levels of regulatory text, While in some cases it is appropriate, and even necessary to use binding rules, (Regulations), in other cases some flexibility needs to be provided by the regulatory system, through the use of non-binding standards (soft law). This need for a balanced approach has been universally recognised and has been implemented by all international organisations and national regulators.”*

16. There are examples in other legislation that are used by regulators to produce guidance documents that keep pace with technological change eg section 85(50)(a) of the Merchant Shipping Act 1995, section 65(3) of the New Roads and Steelworks Act 1991 or section 16 of the Health and Safety at Work Act 1974.

Justification for delegation

17. Given the technical and novel nature of the policy in this area it will be helpful for applicants and sometimes even the regulator to have guidance. The issuing of guidance is likely to lead to reduced compliance costs for business as they will more easily understand the requirements in the provisions identified above. In some areas the guidance outlines the factors to take into account when deciding which approach is appropriate for the particular circumstances at the time, rather than providing a definitive answer.

18. Guidance also offers the opportunity for levels of explanation and detail that would be impossible or inappropriate to provide for by legislation alone. For instance, Civil Aviation Authority (“CAA”) current guidance on licensing of aerodromes is 428 pages in length.²

19. There are parallels with the current approach to health and safety in other safety critical sectors, For instance, in the nuclear sector the HSWA enabled the Ionising Radiations Regulations 1999 (SI 1999/3232) and

¹ EASA is the European Aviation Safety Agency. A similar approach of continuous updating of technical annexes by expert committees is adopted by the International Civil Aviation Organisation (ICAO). ICAO Annexes include “standards” and “recommendations”.

² <https://publicapps.caa.co.uk/docs/33/CAP%20168%20Licensing%20of%20Aerodromes.pdf>

guidance was subsequently developed for the delicensing of nuclear sites.³ This guidance sets out how people can comply with the requirements imposed by or under the Nuclear Installations Act 1965.

20. CAA currently prepares CAPS guidance materials under the power in section 20 of the Civil Aviation Act 1982 (“CAA 1982”). EASA also has its own system of acceptable means of compliance etc⁴.

Justification for procedure selected

21. In keeping with the usual practice relating to guidance provided for in legislation the Department suggests that parliamentary scrutiny would be disproportionate for guidance which of its nature is intended to be user-friendly, detailed and intended to aid policy implementation by supplementing regulations rather than being intended to substitute any legislative provision. Accordingly we submit that it is not necessary for parliamentary procedure to oversee this and indeed, considering the vast amount of guidance on the CAA website (for example), this would be an extensive task.

22. Guidance issued to regulators has a slightly different function. Such a guidance power is provided to assist the regulator in making assessments that involve significant issues of public policy that are not wholly technical in nature. For instance, in assessing risks to participants and the public, the regulator may need additional guidance (to supplement the regulations) on the broad policy principles that it should use to assess risks and determine if, in the case of the risks to the public, they are acceptable. The Secretary of State (perhaps via HSE) is best placed to offer this guidance. Ensuring that there is broader policy input rather than relying solely on the regulator’s technical expertise.

Other delegated powers created by the Space Industry Bill

Clause 2 – Duties and supplementary powers of the regulator

Powers conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 2(7) There is a power for the Secretary of State to make regulations to prescribe the meaning of “members of the public” for the purpose of provisions of the Bill that refer to public safety.

³ Guidance to inspectors on the interpretation and implementation of HSE policy criterion of no danger for the delicensing of nuclear sites dated 13 August 2008.

⁴ <https://www.easa.europa.eu/document-library/acceptable-means-compliance-amcs-and-alternative-means-compliance-altmocs>

Context and purpose

23. The term “members of the public” appears in paragraph 5 of Schedule 3 but public safety is referred to throughout the Bill (e.g. clause 2(1) (duty of the regulator to exercise functions to secure public safety) and clause 10(a) (requirement for an spaceport licence applicant to have taken steps to ensure risks to public safety are as low as reasonably practicable to enable grant of the licence). It will be necessary to describe the persons who constitute members of the public or who do not constitute members of the public for the purposes of distinguishing between persons who voluntarily take part in spaceflight activities in a particular context and those who do not. For example, crew and other persons who choose to be carried on a spaceflight operation would not be regarded as members of the public for the purposes of that operation.

Justification for delegation

24. The determination of who is to be regarded as a member of the public will need to be set out in detail to cover the different circumstances arising from space activities and sub-orbital activities and the operation of spaceports. The term “members of the public” will be defined essentially by excluding persons who are not members of the public, at particular times or in particular circumstances, by way of regulations. In particular it will be necessary to make provision for permissible access and denial of access at certain times, to certain areas within or in the vicinity of spaceports. This detail needs to be worked out in conjunction with the regulation of spaceports generally and cannot be anticipated on the face of the Bill. It is more appropriate to be set out in delegated legislation.

Justification for procedure selected

25. While provisions of this nature are appropriate to be included in secondary legislation the Department proposes that it would not be appropriate to require their debate in Parliament. The issue of public policy that is clear from the face of the Bill is that public safety is paramount. There will be a duty on persons conducting spaceflight activities to mitigate the risks in respect of persons taking part, to as low as reasonably practicable. By contrast, the policy in respect of the wider public is that a spaceflight activity should not be permitted if the risk, despite mitigations, is unacceptable. While this principle is a matter of significant public policy, the Department considers that the negative procedure affords the right level of scrutiny for the detailed regulations concerning persons in particular roles or capacities. Aviation safety secondary legislation under the CAA 1982 which concerns both public safety and safety of those participating (crew and passengers) is made entirely under the negative resolution procedure.

Clause 3 - Prohibition of unlicensed spaceflight etc

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Clause 3(5) - There is a power to make regulations for the purposes of the clause. The power may in particular be used to prescribe eligibility criteria for a licensee and to require prescribed roles to be carried out by individuals on behalf of a licensee.

Context and purpose

26. Spaceflight is a safety critical industry that engages the UK's international obligations. Therefore, it is important to consider the eligibility of a licence applicant e.g. the absence of a criminal record, qualifications and previous experience, good financial standing and repute, ability to demonstrate competence and compliance with technical requirements etc. It is also necessary to make provision for circumstances where certain functions can be carried out by persons other than the licensee, for instance, individuals identified and documented in the organisation's management structure, an accountable manager and those with overall responsibility for safety, operations, engineering and training.

Justification for delegation

27. The Department feels that setting out eligibility criteria for licence applicants or prescribed roles to be undertaken in the primary legislation would be either over-prescriptive; or insufficiently forward looking at this stage, as eligibility criteria or prescribed roles will need to be reviewed as experience builds and relevant considerations change.

Justification for procedure selected

28. This procedure mirrors the procedure applicable to a similar provision in the Outer Space Act 1986. The Department proposes that while parliamentary scrutiny is necessary for the regulations, the detailed provision to be made in relation to licensees and conduct of their activities does not merit debate in Parliament. Moreover, eligibility criteria have been widely accepted for other licensing situations to cover matters such as financial standing and good repute⁵ and so are unlikely to be novel or contentious in this case. The Department proposes that the negative procedure affords the appropriate level of parliamentary scrutiny, particularly as restrictions concerning the circumstances in which the powers may be used are already incorporated in the Bill.

Clause 4 - Exemptions from licence requirement

Powers conferred on: Her Majesty (Clause 4(1))

Secretary of State (Clause 4(2) and (4))

Power exercisable by: Order in Council (Clause 4(1))

Regulations made by statutory instrument (Clause 4(2) and (4))

Parliamentary procedure: No procedure (Order in Council)

⁵ See, for instance articles 5 and 7 of the EC 1008/2008 – the rules governing licensing of EU aircraft operators.

Affirmative resolution (Clause 4(2))

Negative resolution (Clause 4(4))

Clause 4(1) – There is a power to make an Order in Council certifying that arrangements have been made between the UK and another country to secure compliance with the international obligations of the UK and as a consequence no licence is required.

Clause 4(2) – There is a power to make regulations to exempt other persons or activities from the requirement to hold a licence, either by the regulations or by the regulator, if the Secretary of State is satisfied that a licence is not necessary to secure public safety, the health and safety of individuals taking part in spaceflight activities in a role or capacity prescribed under clause 16(1) (informed consent) and is not necessary to secure compliance with the UK's international obligations.

Clause 4(4) – Regulations may make provision for procedural arrangements, terms and conditions, revocation, renewal and enforcement of exemptions and may disapply clause 35 (obligation to indemnify Government etc. against claims) or specify a maximum amount of a person's liability under that clause.

Context and purpose

29. The delegated power in clause 4(1) is based on clause 3(2) of the Outer Space Act 1986 (OSA) which has a similar provision. That provision was included in the OSA for situations where the UN space treaties make the UK and another state jointly liable for a space activity. The provision allows the UK and the other state to agree between themselves who should supervise and accept liability for the activity. In this situation an Order in Council could be made to provide that a person or certain persons do not require a licence and such an exemption would apply to a class of activities.

30. Clause 4(2) allows exemptions for classes of activity and persons from the requirement to hold an operator licence. As the technology in the space sector develops there may be missions that fall within the definitions in this Bill and would require licensing. However, to do so would not be necessary and would be over burdensome on industry. An example could be where a person rents capacity on a satellite (telecommunications satellite). This may fall within the definition of a space activity but in reality the person renting the capacity is not physically operating the satellite (as the original operator of the satellite would be doing this) and therefore this activity would not give rise to any concerns regarding health and safety, public safety or breach of the UK's international obligations.

31. It is not intended to exempt manned spaceflight. However persons taking part pursuant to an exemption under subsection (1) might be in a different position because in theory, although not likely in practice, it might be possible that another State could agree to completely indemnify UK for any claim.

32. Clause 4(4) enables the making of regulations that provide for matters referable to exemptions, such as terms and conditions of exemptions and enforcement. Such regulations may also prescribe whether the requirement in clause 35(2) to indemnify the UK government or a listed person against claims should apply, or be capped.

Justification for delegation

33. The power to make an Order in Council would permit an exemption from a rigorous licensing regime where an agreement has been reached with another State that would make such an exemption appropriate. There is currently no such agreement with another State so it is not possible to include any provision for a specific agreement in primary legislation. Without the power to enable exemption in secondary legislation the UK's ability to enter into any future agreements with other States will be constrained. Any treaties would also be subject to parliamentary scrutiny in accordance with the provisions of the Constitutional Reform and Governance Act 2010.

34. Regulations may also permit an exemption from the licensing requirement subject to the conditions in clause 4(2). The general conditions are set out in the primary legislation as prerequisites before the power to exempt can be exercised but to actually exempt general classes of persons or activity at this stage may be premature. Requiring any classes of exemptions to be prescribed by regulations will operate as an additional safeguard.

35. Regulations under clause 4(4) set out detail which is not necessary to be included on the face of the legislation. It may be necessary to amend such generally procedural provisions and it would be more appropriate to do so in secondary legislation.

Justification for procedure selected

36. No parliamentary procedure is considered necessary for the Order in Council which is consistent with the equivalent power under the Outer Space Act.

37. The Department proposes that for the purposes of providing exemptions from the rigorous regulatory regime under clause 4(2) full parliamentary scrutiny by way of affirmative procedure is appropriate for these regulations.

38. Regulations under subsection (4) are intended to deal with procedural issues relating to exemptions, imposition of terms of conditions and the setting of limits on liability to indemnify the government. The Department submits that while these are matters for parliamentary scrutiny, they do not merit debate in Parliament and accordingly the Department proposes the negative resolution procedure is appropriate here.

Clause 5 - Range

Powers conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Directions

Parliamentary procedure for regulations:

Affirmative procedure to apply to the first exercise of the powers with the regulations thereafter being subject to negative resolution

Parliamentary procedure for directions: None

Clause 5(2) contains a power to make regulations to provide for range for spaceflight activities.

Clause 5(3) The power of the Secretary of State under section 66 Transport Act 2000 (air navigation directions) is modified to include power to give directions imposing duties or powers on the CAA with regard to range for spaceflight activities.

Context and purpose

39. The purpose of the powers in clause 5(2) is to equip the Secretary of State with the powers to ensure that all relevant matters are taken into account when establishing a range; to impose requirements on persons relating to operation of a range; and to set requirements to notify prescribed persons of activities taking place within a range. These provisions enable a range to be established to enable spaceflight operations to take place with minimal risk to public safety and to enable the UK regulator to licence commercial undertakings to provide range control services.

40. Clause 5(3) is necessary to enable the Secretary of State to exercise a similar degree of oversight of the CAA performance of range activities as the Secretary of State currently exercises over CAA performance of air navigation functions.

Justification for delegation

41. Establishing a range for commercial spaceflight activities will be a new activity in the UK and will involve a number of safety and environmental considerations as well as the balancing of different interests. There will also need to be detailed procedural requirements, for instance, relating to third party notifications. The level of detail that is envisaged would not be appropriate to place in primary legislation.

42. The Department proposes that it is appropriate to delegate the power to the Secretary of State to give directions to the CAA, since this power operates to modify section 66 of the Transport Act 2000 and is consistent with the Secretary of State powers in that provision. Moreover, section 66 is itself subject to various statutory controls, such as the constraints set out in section 69 of the Transport Act 2000.

Justification for procedure selected

43. Since any secondary legislation concerning a range will be detailed, technical, practical and procedural in nature, the Department proposes that the first set of regulations be subject to parliamentary scrutiny under the affirmative resolution procedure to establish key principles but that

subsequent regulations which may be frequently required to amend and update should be subject to the negative procedure. In the Department's view this would strike the correct balance in affording parliament a high level of scrutiny at the outset, without consuming a disproportionate amount of parliamentary time, going forward. In addition, the Secretary of State and the regulator (if not the Secretary of State) will be subject not only to the duties set out in clause 2 of this Bill, but also those set out in sections 1 and 2 of the Transport Act 2000, which relate to airspace and air traffic services (both matters affected by the establishment of a range) and which require the Secretary of State and the CAA to maintain a high standard of safety in the provision of air traffic services as well as serve the interests of operators and owners of aircraft and aerodromes and licence holders, protect the environment and comply with international obligations.

Clause 6 Range control services

Powers conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument (Clause 6(1)(g))

Parliamentary procedure: Negative resolution

Clause 6(1)(g) contains a power to prescribe services provided for the purpose of or in connection with services within paragraphs (a) to (f) of that subsection and which relate to any of the matters set out in (2).

Context and purpose

44. Clause 6(1)(g) provides for the making of regulations prescribing additional range control services supporting core services provided by a range controller set out at subsection (1)(a) to (f). This is not an unrestricted power as subsection (2) provides that these services must relate to matters set out in that subsection. This clause ensures that any ancillary but relevant services can be brought within scope of the range control licensing regime if necessary.

Justification for delegation

45. It is not anticipated that the prescribing of additional range control services will be controversial or burdensome. The power will simply enable the Secretary of State to ensure that if the list of services already identified in primary legislation proves, over time, to be insufficient, it can be supplemented.

Justification for procedure selected

46. The negative resolution procedure is proposed by the Department as sufficient because the prescribing of additional services will not involve any significant issues of public policy, but will ensure the policy of licensing range control services keeps pace with practical experience and evolving technologies.

Clause 7 Provisions of range control services

Powers conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution (clause 7(4))

Affirmative procedure to apply to the first exercise of the powers with the regulations thereafter being subject to negative resolution (clause 7(6))

Clause 7(4) contains a power to make regulations to exempt persons or services from the prohibition on unlicensed persons providing range control services either by the regulations or by the regulator, if the Secretary of State is satisfied that a licence is not necessary to secure public safety, the health and safety of individuals taking part in spaceflight activities in a role or capacity prescribed under clause 16(1) and not necessary to secure compliance with the UK's international obligations.

Clause 7(6) contains a power to make regulations making further provision for the purposes of the clause including prescribing eligibility criteria and requiring prescribed roles to be undertaken by individuals on behalf of the range controller. Regulations may also provide for procedural arrangements, terms and conditions, revocation, renewal and enforcement of exemptions.

Context and purpose

47. Clause 7(4) is a limited power as the Secretary of State will need to be satisfied that public safety, the health and safety of individuals taking part in spaceflight activities in a role or capacity prescribed under clause 16(1) (informed consent) and compliance with international obligations are secured. The power to exempt persons from the requirement to hold a range control licence is necessary to avoid imposing an unnecessary burden. For instance, we envisage there might be cases where one element of a range control service could be safely provided by someone other than the licensed range controller.

48. Clause 7(6) provides for regulations to make further provision for the purpose of the clause. This power enables, inter alia, the Secretary of State to prescribe the safety standards, services and performance criteria of infrastructure and activities required of range control service providers, and to prescribe specific safety critical roles and responsibilities. It also provides for necessary procedural provisions relating to exemptions including their revocation, renewal and enforcement to ensure that these matters are set out in legislation.

Justification for delegation

49. Other States that allow spaceflight launch from their territories generally do so using the State to provide range control services. The range control provisions in the Bill are not replicated in the legislation of other States. This offers an opportunity for the UK to innovate in a new area of commercial activity. However, as there are no existing models to copy, we need some flexibility to amend provisions, and grant exemptions as experience develops.

50. Existing considerations may need to be amended and updated and it is necessary to have the flexibility of doing so under secondary legislation so that licensees are not disadvantaged in having to wait for complex technical, safety, security or training provisions to be updated in primary legislation.

51. Regulations under clause 7(6) set out detail which is not necessary to be included on the face of the legislation. It may be necessary to amend such generally procedural provisions and it would be more appropriate to do so in secondary legislation.

52. Range control services have some similarities with air traffic control services, for which the EU has made a large number of implementing acts and delegated acts under its “Single European Sky” legislation⁶.

53. Comparable models also exist in other domestic secondary legislation – for instance, the Construction Design and Management Regulations 2015 (SI 2015/51) provide for detailed safety requirements and designated individual roles when managing building projects. This provides parallels with how the powers in clause 7(5) (c), (e) and (f) may be used.

Justification for procedure selected

54. In relation to the regulations under clause 7(4) exempting a person or services from the prohibition on providing unlicensed range control services it is appropriate that these should be subject to parliamentary debate under the affirmative procedure.

55. The regulations to be made under clause 7(6) will concern detailed technical and operational matters, and procedural provisions, and on that basis it is considered appropriate that the first set of regulations be subject to scrutiny of Parliament under the affirmative resolution procedure but that subsequent regulations which may amend and update as appropriate should be subject to the negative procedure. This affords Parliament the appropriate level of scrutiny and increases the likelihood that legislation will be updated in a timely manner, without competing with other priorities for debating time.

Clause 8 Grant of licences: general

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

Clause 8(5) contains a power to make regulations about how applications for licences are to be made, considered and determined.

⁶ There are 4 Basic EU regulations for the Single European Sky - 549/2004, 550/2004, 551/2004 and 552/2004, but beneath these a large number of implementing acts.

Clause 8(6) provides that the regulations may in particular prescribe, or provide for a person responsible for determining an application, to specify various matters including time periods.

Clause 8(7) provides that the regulations may also provide for inspection of sites; equipment etc. and the obtaining of information by prescribed persons or persons of a prescribed description.

Context and purpose

56. The regulations to be made pursuant to clause 8(5) will set out the application process and pre-licensing checks for different types of licences. This may include pre-licensing scoping meetings to assess the planned operations including the type of vehicles proposed to be operated, type of operation planned (for example satellite launch or sub-orbital flight), and location of operations.

57. Regulations may in particular prescribe the form and contents of an application for a licence, the information to be provided in connection with an application and time limits. The type of information required to be provided may include safety information relating to the operations proposed; vehicle, operational or performance information; information required for the assessment of risk to third parties; information relating to any risk assessment or safety case conducted by the licence holder; and any other information required by the Secretary of State or the regulator (if not the Secretary of State).

58. Regulations made under clause 8(7) are intended to provide assurance to the regulator that the applicant's facilities etc. support the activity being licensed and enable checks to be made by qualified persons for this purpose.

Justification for delegation

59. The matters to be prescribed by regulations include procedural matters and pre-licensing checks. Similar powers are available in section 60 of the CAA 1982 and translate into detailed provisions in the Air Navigation Order 2016. Such procedural and pre-licence matters are therefore not considered by the Department to be appropriate for primary legislation.

Justification for procedure selected

60. The Department proposes that the negative procedure affords the appropriate level of parliamentary scrutiny given that the regulations are largely procedural in nature and cannot alter the basic parameters of the licensing scheme.

Clause 9 Grant of operator licence: safety

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution

Clause 9(2) and (3) provides a power to prescribe in regulations the requirements for a risk assessment that relates to persons performing prescribed roles or capacities.

Clause 9(5) provides a power to make regulations about matters to be taken into account, and other requirements to be met, in carrying out risk assessments more generally. These include the steps to be taken in relation to ensuring risks are as low as reasonably practicable and how acceptable levels of risks for persons not prescribed within the scope of subsection (2), are to be determined.

Clause 9(6) provides that regulations may require information to be provided to the regulator for the purposes of the regulator's functions under this clause.

Context and purpose

61. Spaceflight is a novel and safety critical activity for which no international, EU or domestic safety standards have yet been developed as suitable benchmarks. Nonetheless, the UK does have a highly flexible approach to regulating health and safety across all industries, based on the principle in the Health and Safety at Work Act 1974 ("HSWA"), of reducing risk to as low as reasonably practicable ("ALARP"), while recognising that not all risk can be eliminated. In this clause, a differentiation is made between the risk assessments carried out for those who voluntarily agree to participate ("volunteers") and others who are not taking part in any capacity that exposes them to a level of risk which is higher than that found in most workplaces. In respect of the latter, in particular, regulations will set out how acceptable levels of risk are to be determined.

62. The regulations will prescribe which roles and capacities will be subject to a specific prescribed risk assessment requirements and will include individuals operating as flight crew in the spacecraft, any other participants carried on the spacecraft (in both cases these are likely to be limited to suborbital operations for the foreseeable future); and certain ground personnel directly involved with the spacecraft whilst it is on the ground. Deciding the boundary between volunteers and other workers who perform less high risk roles at a spaceport will require careful consideration in secondary legislation.

63. The matters to be addressed in a risk assessment for the persons prescribed under subsection (2) will be laid down in detail in regulations, rather than leaving more discretion to the regulator. These may include matters relating to the design and operation of the vehicle involved in space activity or sub-orbital operations; the licensing, flight training and requirements for crew; the training and procedures for ground personnel; occupant safety and survivability, and medical requirements for crew and other occupants of the vehicle. Setting out more detailed requirements for those in the highest risk roles assists the regulator and operator who will not have detailed international standards to rely upon.

64. Clause 9(5) provides that regulations may make provision about the matters to be taken into account and other requirements to be met, more generally in carrying out all risk assessments. Sub-paragraphs (b) and (c) address the risk to public safety - the steps to be taken in relation to ensuring risks are as low as reasonably practicable and how acceptable levels of risks are to be determined. The regulations will prescribe the

factors that must be taken into account in determining levels of risk. These may include:

- The hazards posed by the proposed operation;
- The areas that could be affected by debris from a spaceflight failure;
- Failure frequencies or probabilities.

65. Clause 9(6) provides that regulations may require information to be provided to the regulator for the purposes of the regulator's functions under this clause. It is envisaged that this will include relevant technical information related to the spacecraft; flight test results; records of anomalies, incidents and accidents during flight operations and tests; information to assess the risk to the health and safety of individuals taking part in the spaceflight activities; information to assess the risk to the health, safety and property of individuals not taking part in the activities; records of training and medical assessments of individuals taking part in the prescribed capacities or roles; and all other documentation, relevant to safety that the regulator would reasonably expect to be made available to it.

Justification for delegation

66. Evaluation of risk and risk mitigation will be detailed and complex exercises. It is anticipated that the secondary legislation will set a framework, but will be supplemented by guidance. The approach taken in clause 9 has some parallels with the approach in the HSWA, where the high level ALARP principle has enabled secondary legislation to be developed for different sectors.

67. It is likely that over time advances in science and changes in technology, commercial or operational practice will require changes to the requirements relating to evaluation of risk and the information that the regulator will need to carry out functions under clause 9. Initially, where there are limited data concerning test flights, the regulator may need the flexibility to make highly cautious assumptions about the likelihood of operational failure and to require alternative mitigations (such as a large range) to compensate and bring the risk down to an acceptable level. As technologies establish a proven track record, it may be possible to adjust the balance of different factors in a risk assessment. It is therefore appropriate and proportionate that the detail relating to these matters should be contained in regulations.

Justification for procedure selected

68. The Department accepts that parliamentary debate is necessary for the regulations made under this power, relating to the setting of requirements for a risk assessment of the risks to health and safety of individuals taking part in spaceflight activities; the steps to be taken to ensure that risks are reduced as low as reasonably practicable for other persons; and determination of acceptable levels of residual risk for such persons. This offers a higher level of scrutiny than regulations made under the HSWA which generally follow the negative resolution procedure. The Department considers the affirmative procedure is justified because of the significant public policy issues that will be engaged and the novel nature of spaceflight.

Clause 10 Grant of a spaceport licence

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 10(b) There is a power to make regulations prescribing criteria or requirements which must be met for the grant of a spaceport licence.

Justification for delegation

69. Given that spaceports are likely to be different in respect of vertical and horizontal launch, the requirements and criteria relating to these will differ. Such provision and detail is more appropriate to be included in secondary legislation rather than in primary legislation. The Bill already lists the general provisions and conditions of licence that would apply in respect of a spaceport licence.

Justification for procedure

70. The Department proposes the negative procedure provides the right degree of parliamentary scrutiny of these provisions. That procedure is used for prescribing requirements in respect of licensed aerodromes in an Air Navigation Order, pursuant to powers in the CAA1982 (section 60).

Clause 12 and Schedule 1 - Conditions of licences

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure:

Negative resolution (clause 12(3))

Affirmative procedure to apply to the first exercise of the powers with the regulations thereafter being subject to negative resolution (clause 12(7))

Clause 12(1) and Schedule 1 make provision for a wide range of licence conditions.

Clause 12(3) There is a power for the regulator to require certain conditions to be included in licences in particular cases or circumstances.

Clause 12(4) There is a power for the regulator to accept or recognise an authorisation etc. by a designated country included in a list published by the Secretary of State.

Clause 12(7) there is a power to make regulations prescribing how the holder of a licence may or must comply with prescribed kinds of licence conditions.

Context and purpose

71. The regulation of spaceflight activities and spaceports is intended to be by way of licence. Therefore, licence conditions will be a key regulatory tool. They also offer the flexibility to be conditions precedent or on-going conditions depending on the relevant stage of the licensing process or the operation. The purpose of the power in subsection (4) is to enable the UK to selectively recognise all or part of other States' regulatory activity provided it has confidence in the robustness and adequacy of that activity.

72. Schedule 1 (list of possible licence conditions) is self-explanatory. Although it provides a non-exhaustive list, it is sufficiently comprehensive to give potential licensees a clear picture of the type of requirements they may have to meet.

73. Subsection (3) enables the Regulator to prescribe mandatory conditions if these are considered necessary to provide a safeguard to the Government in respect of increased contingent liability etc.

74. Subsection (4) will enable the Regulator to accept or recognise other countries' authorisations or the outcome of processes required in connection with a licence application when setting licence conditions. Such countries would be designated by the Secretary of State. This will help regulators to draw on expertise of other regulators and avoid duplication of regulation, where the regulator and Secretary of State consider this appropriate.

75. Regulations under subsection (7) may prescribe what the holder of a licence under the Bill may or must do in order to comply with prescribed licence conditions. Such matters might include timescale and evidence. Different conditions will be necessary for different types of licensing. For example, in broad terms three types of licensed spaceport are envisaged:

- a) A facility for operating horizontally-launched vehicles for sub-orbital operations, single stage to orbit and hybrid orbital operations ("a horizontal operations spaceport");
- b) A facility for operating vertically-launched vehicles for orbital or suborbital flights ("a vertical operations spaceport");
- c) A facility for the take-off of stratospheric balloons ("a stratospheric balloon spaceport").

76. The different characteristics of each of these mean that the prescribed conditions and methods of compliance will vary. Equally, we are already aware of multiple different types of spaceflight operation that deploy different technology or machine combinations.

77. It is not possible to foresee every requirement that may need to be imposed in a licence in primary legislation. Moreover the advances in technology would mean that requirements would need to be amended and updated. The Department therefore proposes that the regulator may by administrative means provide for additional conditions and to take into account specified matters when setting conditions. Illustrative examples of the kinds of conditions that would be imposed are set out in Schedule 1.

78. Although not exhaustive (because the Department cannot anticipate every requirement that might be needed in the future) the Schedule seeks to capture the matters that are anticipated to become the subject of licence

conditions in the near future. The Department's view is that this comprehensive list maximises transparency – demonstrating what Parliament and applicants should expect to see in a licence; whilst recognising there will necessarily be differences between the licence conditions for operation of a small satellite, compared to operating a powerful launch vehicle.

79. There is a selective recognition power in subsection (4) that enables some overseas regulatory verification to be recognised while safety assurance is maintained by the UK. This recognition power is advantageous for both the UK and the commercial space flight industry. When the power is applied it reduces the need for duplicated effort for compliance demonstration activity already undertaken which may have a positive impact by: reducing regulatory resource requirements, costs and administrative process. It is not possible at this point to be prescriptive in primary legislation as to which States or which element of other State regimes, UK might need to recognise – as this will be on a case by case basis.

80. There are detailed consultation provisions in subsection (6) requiring the regulator to consult with other persons exercising health and safety, defence or other key functions, which the Department suggests provides an additional degree of oversight.

81. With regard to the delegated power in subsection (7) again it would not be feasible to set out in primary legislation how the holder of a licence can comply, or what the person must do to comply, with prescribed licence conditions. This level of detail is better set out in secondary legislation which would enable transparency of the regulator's expectations and result in more effective compliance.

Justification for procedure selected

82. The Department proposes that the negative procedure would provide the appropriate degree of parliamentary scrutiny for regulations made under clause 12(3) as these would be the most obvious conditions that would be required to be included.

83. The Department does not propose any parliamentary procedure for the designation of countries provided for under clause 12(5) – particularly since Schedule 1 sets out a good level of detail by way of example of the kinds of conditions that may be imposed.

84. It is proposed that for regulations made under clause 12(7), given their technical and detailed provision, the first set of regulations should be subject to scrutiny of Parliament under the affirmative resolution procedure but that subsequent regulations which may amend and update such provisions as appropriate should be subject to the negative procedure, affording Parliament the appropriate level of scrutiny.

Clause 15: Power of Secretary of State to appoint person to exercise functions

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Directions

Parliamentary procedure for regulations: Negative resolution

Parliamentary procedure for directions: None

In clause 15(1) there is a power for the Secretary of State to make regulations appointing the CAA or other person to exercise functions of the regulator under the Bill.

Clause 15(5) confers power for the Secretary of State to give an appointed person any directions considered necessary or expedient in the interests of national security or the national interest.

85. The commercial spaceflight industry is in its early stages as regards launch from the United Kingdom and while the Secretary of State is the regulatory authority in the Bill, it is the Government's intention to appoint the CAA to perform certain functions and that the United Kingdom Space Agency (an agency of the Department for Business, Energy and Industrial Strategy) will fulfil functions remaining with the Secretary of State. It is therefore necessary for the Secretary of State to be able to appoint the CAA or another person to carry out the functions of the regulator. It is proposed that this appointment should be done through regulations.

86. There are safeguards constraining the powers of an appointed person. They may not exercise certain important powers like the powers to make regulations or give directions in the interests of security or relations with another country or territory etc. or to indemnify a licensee or third party. The appointee must consult the Secretary of State before setting licence conditions, renewing, revoking, varying or consenting to the transfer of a licence.

87. Initially, it is envisaged the CAA will be appointed to perform regulatory functions relating to horizontal suborbital operations and to work with the UKSA to authorise hybrid operations.

88. In addition the appointment may be restricted to particular purposes, particular activities or operations or in relation to particular areas, for a particular period and subject to conditions.

89. The Secretary of State has the power to direct the appointed person where necessary or expedient in the interests of national security or otherwise in the national interest. This ensures that these interests are protected, notwithstanding the delegation of regulatory functions to an appointed person.

Justification for delegation

90. The Department proposes that delegated legislation is a more appropriate route for setting out provisions applicable to appointed persons as the necessary limitations and conditions would be too lengthy to be in primary legislation.

91. Directions cannot of their nature be on the face of the legislation as they are given as necessary as circumstances require.

Justification for procedure selected

92. The Department proposes the negative procedure as suitable for the power to make these regulations as it will enable appropriate parliamentary scrutiny without expending valuable debating time.

93. The Department does not feel that directions, as provided for in subsection (5) should be subject to any form of parliamentary procedure as it is not customary in cases such as this and because such directions may need to be given in cases of urgency, for instance if information was received about a terrorist threat.

Clause 16 Informed consent

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 16(1) requires the holder of an operator licence not to allow individuals to take part in a prescribed role or capacity in spaceflight activities, unless the individual has given informed consent and fulfils any requirements as to age and mental capacity that are prescribed in regulations.

Clause 16(3) gives the Secretary of State power to make regulations about how such consent is to be given.

Context and purpose

94. The purpose of this clause is to ensure that individuals taking part in spaceflight activities do so with full awareness of the risks involved. This is consistent with the UK's implementation of health and safety obligations. It is also a necessary corollary to clause 36 (regulator etc. not liable for spaceflight-related activities) and would help protect the UK government and other regulators from liability for authorising potentially dangerous activities.

95. Regulations will provide for the individuals required to sign an informed consent. Such persons are anticipated to be spaceflight participants, crew, ground staff and possibly some other people who are at the spaceport for the purposes of their business.

96. Regulations will prescribe the form and content of consent forms, information to be provided in advance and signification of consent. A similar requirement exists for US commercial spaceflight operations under the Commercial Space Launch Act 2004 and secondary legislation made under it. Informed consent is also a concept familiar in English law in the context of medical treatment and dangerous sports.

Justification for delegation

97. The Department does not feel that it would be appropriate to set out detail on the consent forms, or information to be provided or means of validation in primary legislation as these may need to be amended from time to time and doing so through primary legislation might be deemed an unjustifiable use of parliamentary time.

98. The individuals taking part in prescribed roles and capacities are those for whom a risk assessment is required to be carried out under clause 9(2). It is appropriate for these individuals to be identified in secondary legislation as they may not all be known at the time of making primary legislation and amendment would subsequently also be made through secondary legislation.

Justification for procedure selected

99. The Department proposes the negative procedure provides the appropriate level of parliamentary scrutiny for regulations made under this clause. It provides transparency and ensures flexibility, since the important public policy principle of applying informed consent requirements to persons who agree to accept a level of risk, is set out in the Bill. An example of where informed consent provisions have also been made in secondary legislation, using the negative resolution procedure is the Medicines for Human Use (Clinical Trials) Regulations 2004 (SI 2004/1031).

Clause 17 Training, qualifications and medical fitness

Schedule 2 Training regulations: Further provision

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 17(1) gives the Secretary of State power to make regulations providing for training, qualifications and medical fitness of certain individuals. Schedule 2 includes examples of provision that may be made in those regulations.

Clause 17(4) gives the Secretary of State power to specify, in those regulations, roles and activities that a licence holder must not allow an unqualified individual to carry out.

Clause 17(5) give the Secretary of State power to specify, in regulations made under subsection (1), training, qualifications and medical fitness criteria that an individual must fulfil in order to be qualified.

Context and purpose

100. The purpose of this clause is to require that individuals taking part in spaceflight activities, the provision of range control services or working at sites used for spaceflight activities or the provision of range control services have sufficient training, qualifications and fitness to carry out their own

tasks and to ensure their own safety and the safety of others. Aviation legislation similarly has requirements for training, qualifications and fitness.

101. Schedule 2 sets out the broad matters to be covered in regulations. Commission Regulation EU 1178/2011 (an EU implementing act) contains the current EU requirements for pilot licensing and is illustrative of the levels of detail that may be required. For spaceflight, persons performing a number of roles will need to have training and other matters prescribed and provision will also be needed for training providers and assessors. We anticipate that the detail will borrow from aviation legislation and will build on existing training and qualification processes where possible, but with additional bespoke elements.

Justification for delegation

102. The requirements as to training, qualifications and medical fitness will be new and will be required to evolve with experience and in consultation with stakeholders. The equivalent aviation requirements are also in secondary legislation (see Part 6 of the Air Navigation Order 2016). It is anticipated that periodic amendments would be necessary to reflect the availability of new training and qualifications that become available. It is therefore appropriate that these provisions are made in secondary legislation.

Justification for procedure selected

103. The Department proposes the negative resolution procedure provides the level of parliamentary scrutiny appropriate to the delegated power proposed, given the subject matter of the regulations.

Clause 18 Safety regulations

Schedule 3 - Safety regulations: further provision

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative procedure to apply to the first exercise of the powers with the regulations thereafter being subject to negative resolution.

There is a power in clause 18(1) to make regulations for the purposes of securing safe operation of spaceports and mission management facilities, and the safety of spaceflight activities and range for spaceflight activities.

Schedule 3 makes provision for the various matters that may be covered under safety regulations made under this clause.

Context and purpose

104. Clause 18(1) enables the Secretary of State to make safety regulations for the purpose of securing safe operation of spaceports and mission management facilities, spaceflight activities and range for

spaceflight activities. Safety is addressed throughout the Bill with detailed safety provisions under regulations relating to specific activities and licensing. The regulations made under clause 18 are intended to supplement the safety requirements imposed elsewhere in the Bill.

105. Schedule 3 gives examples of particular kinds of provision that may be made by safety regulations and provides transparency. The exact nature of these safety provisions will vary depending on the type of operation.

Justification for delegation

106. In order to make adequate provision for ensuring safety it is necessary to set out detailed considerations in secondary legislation which it would not be proportionate to set out in primary legislation. This is also important to enable flexibility to amend these requirements that may be subject to change as experience develops.

107. It is proposed that in relation to regulations made under clause 18 that given their technical and detailed provision it would be appropriate for the first set of regulations be subject to scrutiny of Parliament under the affirmative resolution procedure. However, spaceflight safety will be a fast-developing area and it is important that continuous updating and improvement occurs in a nimble and proportionate way. It is therefore proposed that subsequent regulations should be subject to the negative procedure, offering Parliament the appropriate level of scrutiny, whilst reflecting the experience of other safety critical sectors like aviation that subject safety rules to constant on-going review. In addition, Schedule 3 gives notice of the likely content.

Clause 19 Investigation of accidents

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative Resolution

Clause 19(1) There is a power to make regulations for the investigation of accidents involving spaceflight activities in the UK or elsewhere (including activities to which the OSA applies).

Clause 19(2) The regulations may make certain provisions including provisions similar to those which can be made under section 75(3) of the CAA 1982 and for the recovery of expenses from prescribed persons.

Context and purpose

108. The purpose of the clause is to grant the Secretary of State the power to make regulations to enable the investigation of accidents which involve space activities and sub-orbital operations. There are no UK or international regulations or UN space treaties regulating conduct of investigation of accidents in space.

109. The Secretary of State already has the power to investigate any accident arising out of or in the course of air navigation and either occurring in or over the United Kingdom or occurring elsewhere to aircraft registered in the United Kingdom and for carrying out any Annex to the Chicago Convention (section 75(1) CAA 1982).

110. The Secretary of State exercises existing powers to investigate air accidents and incidents pursuant to the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996 (S.I.1996/2798) (the "1996 Regulations"). It is envisaged that the regulations dealing with the investigation of spaceflight accidents will correspond to the 1996 Regulations.

111. The investigator will need to recover not only the costs of carrying out an investigation, but also the storage costs of the wreckage, after the investigation is complete and disposal costs of the wreckage if the owner decides not to collect the wreckage. The recovery of costs would be on cost basis. There would not be an additional charge or profit making basis. The costs would be sought from the owner of the spacecraft.

Justification for delegation

112. The accident investigation regime for aviation is prescribed in detail in secondary legislation and has been amended several times. Spaceflight accident investigation is a new activity and bespoke new provisions may need to be developed. The Department submits that it would not be helpful to have detailed provisions on the face of the Bill.

Justification for procedure selected

113. The Department proposes that the negative procedure affords the appropriate level of parliamentary scrutiny. It is worth noting that regulations under section 75 of the CAA 1982 are subject to the negative resolution procedure.

Clause 20 Assistance etc. with performance of regulator's safety function

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

114. Clause 20(2)(c) There is a power to make regulations prescribing that a body or person whose functions are of a public nature relating to safety is to be a qualifying health and safety authority for the purposes of clause 20.

115. Clause 20(6) there is a power to make regulations prescribing functions which a regulator may not authorise a qualifying health and safety authority to carry out under clause 20(1)(b).

Context and purpose

116. The Health and Safety Executive (HSE) and the CAA operate a Memorandum of Understanding (MoU) which allocates enforcement of health and safety issues to the CAA for all activities on board an aircraft. By this MoU, HSE is responsible for regulating the occupational health and safety of other work activities on and around an aircraft on the ground.

117. Clause 20 enables the regulator to request advice and assistance from a qualifying health and safety authority. It also enables the regulator to authorise qualifying health and safety authorities to carry out regulatory functions on its behalf. The power to seek advice from or authorise health and safety authorities to perform safety functions on its behalf, will provide the regulator with the ability to best manage and regulate the risks of spaceflight activities.

118. The purpose of subsection (2) is to set out the bodies who are qualifying health and safety authorities and includes a power to add to this list in regulations. This enables future bodies to be added as necessary.

119. The purpose of subsection (6) is to enable the Secretary of State to make regulations to restrict the functions that health and safety authorities may perform on behalf of the regulator.

120. The policy here is to ensure that in carrying out its functions, e.g. the licensing functions, the regulator is able to draw on the expertise of the HSE, the Office for Nuclear Regulation or a prescribed body or person (as appropriate) to inform its decision making. There is a need to make provision to include other bodies who could advise on safety issues.

121. Regulators need the flexibility to authorise health and safety authorities to perform regulatory functions on their behalf in cases where that health and safety authority has the greater/more specialist expertise – for instance, there are existing competent authorities with expertise and responsibility for regulating control of major accident hazards involving dangerous substances under the Control of Major Accident Hazard Regulations 2015 (SI 2015/483). However it is important that the Secretary of State has the power to control delegation of certain functions in cases where this is not considered appropriate.

122. The effect of being a prescribed person under clause 20(2) has consequences for the scope of other provisions under the Bill. Such persons would have the benefit of an indemnity from a person carrying out spaceflight activities under clause 35(1) and the protection conferred on the regulator and other persons by clause 36.

Justification for delegation

123. The Department proposes that it is appropriate to make provision for adding to the list of qualifying health and safety authorities in secondary legislation, so that the regulator can utilise suitable expertise if it is available in future.

124. Further, controls on the delegation of functions to qualifying health and safety authorities will also need to be considered and developed in the light of practice. If controls are imposed in primary legislation now, these may be too restrictive. On the other hand, if no controls are imposed in primary

legislation, the Secretary of State may be powerless if a situation arises where it is felt these need to be exercised.

125. Where the qualifying health and safety authority performs a function on behalf of the regulator it would be more appropriate that such an authority should enjoy the same protection from liability as the regulator.

Justification for procedure selected

126. The Department proposes the negative resolution procedure provides the right level of parliamentary scrutiny needed in respect of restricting functions that health and safety authorities may perform as it might be argued that this does not necessarily merit parliamentary debate.

Clause 22 Security regulations

Schedule 5 Security regulations – further provision

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative procedure to apply to the first exercise of the powers with the regulations thereafter being subject to negative resolution (Clause 22(1))

Order - None (Clause 22(4))

Clause 22(1) There is a power to make regulations for the purpose of ensuring security in relation to spacecraft and their payloads, spaceports, spaceflight activities and range control services including associated activities and associated facilities (security regulations).

Clause 22(4) provides a power for the Secretary of State by order to suspend the application of any security requirement in relation to an aerodrome occupied for the purposes of the armed forces subject to being satisfied of certain conditions.

There is a power in Schedule 5, paragraphs 2 and 3 for security regulations to make provision corresponding to that made by certain listed provisions of the Aviation Security Act 1982, or to provide for those provisions of the 1982 Act to apply to spaceflight activities with or without prescribed modifications. These powers are subject to certain consultation requirements (paragraph 4) and provision to ensure consistency in the mode of trial and penalties imposed for offences under the 1982 Act and for offences under the regulations.

Context and purpose

127. Clause 22 provides for the Secretary of State to make regulations establishing appropriate minimum standards of security in relation to the operation of spacecraft and their payloads, spaceports, spaceflight activities and range control services, including associated activities and facilities.

128. Schedule 5 provides an outline of what may be included in security regulations in respect of spaceflight activities and associated sites and facilities, which may include provision for:

- security vetting of persons permitted access to restricted areas;

- screening, searching and controlling vehicular access;
- allowing regulator to temporarily prevent rights of way being used;
- training and qualifications of security personnel;
- use of systems of destruction of spacecraft or space objects in flight or orbit and physical security and electronic security of explosives etc. used for such systems.

129. The purpose is to establish a security regime for spacecraft and spaceflight operations, similar to that applicable to civil aviation. In aviation the UK security rules are based upon EU civil aviation legislation, primarily Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security. This is supplemented in UK, by more stringent measures as set out in directions⁷. Commercial spaceflight will pose different security challenges to aviation. For instance, vertical launch operations will be unmanned and conducted at remote locations that are unlikely to be conventional aerodromes. Thus, while security for sensitive technologies will be necessary, there will not be the challenge of large passenger numbers transiting from all parts of the world. The intention is that the Secretary of State should be able to require any security measure for spaceflight operations, as might apply to civil aviation, where this is appropriate or necessary, but with the flexibility to adapt to different security risk assessments.

130. The purpose of clause 22(4) is to confer a power to enable the Secretary of State to make an order suspending any applicable security regulation relating to an aerodrome in circumstances where this would interfere with the operations of the armed forces⁸ and any incidental, supplemental or transitional provision that may be necessary. However, the Secretary of State can only make an order under this power if satisfied that it is necessary to do so because of the operational requirements of the armed forces and that the period of suspension is as short as necessary for those requirements. The Secretary of State must give notice of the order in accordance with subsection (6)(a)

Justification for delegation

131. The Department feels that it would be disproportionate to include spaceflight security measures in the Bill as this could comprise a large amount of material. While the intention is to draw on existing provisions in EU or domestic aviation security rules, the application in respect of spaceflight will require significant modification in drafting terms and substantive modification for different spaceflight challenges. The Department therefore proposes that it is appropriate that a power to make regulations is taken to provide for security arrangements.

132. The Department proposes that the power to suspend requirements or restrictions in security regulations in their application to an aerodrome

⁷ These are confidential and so not published

⁸ This provision is without prejudice to the principle of Crown immunity which is not dis-applied in the Bill and which operates to exempt State activity from its requirements.

occupied by the armed forces is more appropriately conferred through an order of the Secretary of State as this would allow for the exercise of the power when this is considered necessary and enable the setting of provisions relating to this exemption which do not need to be in primary legislation.

Justification for procedure selected

133. The Department proposes that it is appropriate for the first set of regulations to be made under clause 22(1) to be subject to the affirmative resolution procedure, as this will set the benchmark for security, with a high level of parliamentary scrutiny. However, as for other powers where the Department suggests affirmative procedure for “first use only”, subsequent regulations may need to be updated frequently. Therefore, the Department feels that the negative procedure, offers Parliament an appropriate proportionate level of scrutiny for subsequent regulations. Schedule 5 already provides a good level of transparency to Parliament.

134. It is not necessary for an Order made under clause 22(4) to be subject to parliamentary procedure as it relates to a temporary suspension of requirements in restricted circumstances.

Clause 23 Spaceport byelaws

Power conferred on: Spaceport operator

Power exercisable by: Byelaws confirmed by Secretary of State

Parliamentary procedure: No procedure (clause 23(1))

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative Resolution (clause 23(10))

135. There is a power under clause 23(1) for a spaceport licensee operating a spaceport to make byelaws regulating the use and operation of the spaceport and conduct of persons within it in order to ensure security of the spaceport, spaceflight activities etc. and spacecraft and payloads at the spaceport.

136. There is a power under clause 23(10) for the Secretary of State to make regulations revoking or varying a spaceport byelaw after consulting the person who made the byelaw.

Context and purpose

137. The purpose of clause 23(1) is also to allow an operator of a spaceport to make local byelaws to protect the safety and security of operations at the spaceport and the security of spacecraft, vehicles and persons using the spaceport. This is similar to existing powers given to airport operators under section 63 of the Airports Act 1986. The spaceport

operator may make byelaws to regulate vehicular traffic within the spaceport, prohibit or restrict access to any part of the spaceport, preserve order within the spaceport and prevent damage to property in the spaceport.

138. Clause 23(5) places a requirement on a spaceport licensee to consult the operator of a spaceport before byelaws are made.

139. Clause 23(6), as with airport byelaws, requires confirmation by the Secretary of State before a spaceport byelaw can have effect.

140. Clause 23(7) applies the further provisions regarding byelaws, set out in Schedule 3 to the Airports Act 1986, to spaceports, so far as they also apply to airports. These include requirement to give notice of the intention to apply for confirmation in one or more local newspapers circulating in the locality of the airport to which the byelaws relate; the notice should specify a period of not less than one month during which representations on the byelaws may be made to the Secretary of State.

141. Examples of the byelaws in force at London Heathrow airport can be found in the Heathrow Byelaws 2014⁹ made under sections 63 and 64 of the Airports Act 1986 and section 37 of the Criminal Justice Act 1982.

142. Clause 23(10) enables the Secretary of State to revoke or vary byelaws to the extent that they appear inconsistent with the security of the spaceport, spaceflight activities etc.; the safety of persons or vehicles using the spaceport, of spacecraft or of the general public or any international obligation of the United Kingdom. However the Secretary of State must consult the person making the byelaws prior to taking action to revoke or vary the byelaws.

Justification for delegation

143. The power to make byelaws is needed to enable the spaceport operator to ensure security of the spaceport and the security of spacecraft, vehicles and persons using the spaceport. However, this power is balanced by controls exercised by the Secretary of State. Spaceport byelaws do not have effect until approved by the Secretary of State. In addition, the Secretary of State has the necessary power to make regulations to revoke or vary byelaws to the extent they are inconsistent with safety or any international obligations of the UK. As it is not yet known where byelaws will be needed, or what form they will need to take, it is not possible to insert these detailed provisions in primary legislation.

Justification for procedure selected

144. The correct level of scrutiny over byelaws is considered to apply as a result of the need for the Secretary of State to confirm the byelaws before they come into effect. The byelaws are subject to the controls of Schedule

⁹ http://www.heathrow.com/file_source/Heathrow/Static/PDF/HAL_Byelaws_2014.pdf

3 to the Airports Act 1986. These ensure the airport operator makes any proposed byelaws public to enable the public to make representations to the Secretary of State on the proposals,

145. The Department proposes that the negative resolution procedure is appropriate for the regulations revoking or varying byelaws as these relate to operational details of a spaceport at a specific location; and this is the procedure for the corresponding aviation rules in section 63 of the Airports Act 1986.

Clause 25 Monitoring and enforcement by regulator

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 25(3) There is a power to make regulations to enable the regulator to secure compliance with the provisions of the Bill and of regulations made under it, with conditions in licences granted under the Bill, with the international obligations of the UK, including the Space Treaties¹⁰, as well as other international obligations and for protecting public safety and the national security of the UK (see clause 25(2)). Subsection (3) sets out the various types of provision which may be included in the regulations.

Context and purpose

146. Clause 25 makes provision for monitoring and enforcement by requiring the regulator to monitor spaceflight activities, operation of spaceports, provision of range control services by range controllers and associated activities for the purposes mentioned in clause 25(2). This is a necessary function to monitor and secure compliance with the requirements of the Bill. Sharing of information with other regulatory bodies in the UK, and with other countries, may be required to secure effective regulation. To do this it is necessary to provide for the powers to carry out the function effectively and it is appropriate for these to be set out in regulations.

147. This power provides the Secretary of State with flexibility to develop proportionate and appropriate regulation as operational requirements become more understood and provision to monitor those requirements may need to be adapted.

148. We anticipate making similar provision to the provisions contained in Part 9 and Chapter 4 of Part 10 of the Air Navigation Order 2016.

Justification for delegation

149. The Department proposes that it is appropriate for detailed monitoring and enforcement provision to be provided for in secondary legislation, rather than in primary legislation, as this is a developing industry and

¹⁰ <http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties.html>

changes to the enforcement regime must be possible without having to wait for an opportunity provided for by primary legislation. This mirrors the approach taken under section 60 of the CAA 1982: see, for example, section 60(3)(c) of that Act and article 261 of the Air Navigation Order 2016 (right of access to aerodromes and other places). Similarly, Part 9 of that Order contains detailed provisions for the keeping, preservation, inspection and copying of various documents and records required in relation to civil aviation.

Justification for procedure selected

150. The Department proposes that the secondary legislation should be subject to parliamentary scrutiny given its subject matter but considers that the negative resolution procedure provides the appropriate level of scrutiny. This mirrors the approach taken by the Air Navigation Order and section 60 of and Schedule 13 to the 1982 Act, under which an Air Navigation Order is subject to the negative resolution in almost all respects¹¹ and particularly with respect to powers that provide for the essential legal tools of a regulator as the powers in clause 25 do.

Clause 26 Power to give directions: breach of licence condition etc.

Power conferred on: Regulator.

Power exercisable by: Directions.

Parliamentary procedure: None.

151. Clause 26(2) contains a power for the regulator to give directions to persons carrying out spaceflight activities, operating a spaceport or providing range control services where the activity is being carried out without an authorisation, in contravention of a licence condition or in contravention of any provision in the Bill. The power is limited to where its exercise appears to be necessary in the interests of safety or to secure compliance with: licence conditions, with provisions of or made under the Bill or with the international obligations of the UK (subsection (2)).

Context and purpose

152. A comparable power is contained in article 248 (operational directives) of the Air Navigation Order 2016, under general powers derived from section 60 of the CAA 1982. This enables the CAA to prohibit a civil aviation operation or to limit it or subject it to specified conditions, in the interests of safe operations.

153. A direction may, where the conditions of subsection (2) are met, prohibit specified spaceflight activities or may prohibit specified spaceflight activities unless specified conditions are complied with or where such conditions are necessary for any of the purposes specified in subsection (2). A direction would be issued by a person authorised by the regulator,

¹¹ The exception is the power in clause 60(3) (r) to prohibit aircraft taking off or landing, which has no similarity to the powers in clause 25.

probably for a defined period of time, citing reasons and would define any specified conditions.

154. Clause 30 makes further provision about directions under this clause including restrictions on disclosure and enforcement. Directions are subject to review.

Justification for delegation

155. As directions are addressed to a specific person, who may or not be individuals, it is necessary to provide for a power to make them in primary legislation so that the regulator can issue directions as and when necessary and in cases of urgency.

Justification for procedure selected

156. This power is not subject to parliamentary procedure but before giving a direction to a person the Regulator must consult that person under clause 29. Where the regulator is giving a direction they must consult the Secretary of State (clause 29(1)(a)).

Clause 27 Power to give directions: safety, security etc.

Power conferred on: Secretary of State

Power exercisable by: Direction

Parliamentary procedure: None

Clause 27(1) - there is a power for the regulator to give a regulated person whatever directions the regulator considers necessary or expedient in the interests of health or safety. "Regulated persons" means holders of a licence under the Bill and any person who is exempted under clause 4 or under clause 7(4).

Clause 27(2) - there is a power for the Secretary of State to give the regulator (if the regulator is not the Secretary of State) a direction to do, or not to do, a particular thing, if the Secretary of State considers it necessary or expedient to do so in the interests of health or safety, spaceflight security, national security or relations with a country or territory outside the UK.

Clause 27(3) - there is a power for the Secretary of State to give a regulated person, particular kinds of regulated persons, or regulated persons generally, directions of a general nature if the Secretary of State considers it necessary or expedient to do so in the interests of health or safety, spaceflight security, national security or, relations with a country or territory outside the UK.

Clause 27(4) - there is a power for the Secretary of State to give a regulated person a direction to do or not to do a particular thing if the Secretary of State considers it necessary or expedient to do so in the interests of health or safety, spaceflight security, national security or relations with a country or territory outside the UK.

Spaceflight security means the protection of spacecraft and space sites, and of persons and property aboard spacecraft and at space sites, against acts of violence (as defined) and

protection of spaceflight activities against acts of unlawful interference that threaten the security of those activities.

Context and purpose

157. This clause confers a power to issue a direction to a regulator or to a regulated person where it is considered necessary or expedient in the interests of health or safety, spaceflight security, national security or relations with another country or territory outside the UK. Section 6 of the CAA 1982 and sections 66 to 69 and 92 of the Transport Act 2000 contain similar powers to give directions to the Civil Aviation Authority in relation to how it is to exercise functions under the latter Act. Sections 38 and 39 of the latter Act also give the Secretary of State powers of direction, in relation to licence holders under that Act, in the interests of national security and the environment, and under section 93 to various categories of person in time of hostilities, severe international tension or national emergency. These powers are also drawn from powers in section 10 of the Aviation Security Act 1982.

158. Clause 30 makes further provision about directions under this clause including restrictions on disclosure and enforcement. Directions are subject to review.

Justification for delegation

159. As this power is to be exercised in both individual and in general cases which cannot be specified with any particularity, the exercise of these cannot be anticipated in primary legislation.

Justification for procedure selected

160. This power is not subject to parliamentary procedure but before issuing a direction to a regulated person under subsection (4) requiring a licensee to revoke or vary a byelaw under clause 23, the Secretary of State must consult the relevant affected persons. Clause 29 also provides for consultation before giving a direction under this clause. However in an urgent case, consultation is only required if practical (see clause 29(5)).

Clause 28 Power to give directions: international obligations of the UK

Power conferred on: Secretary of State

Power exercisable by: Direction

Parliamentary procedure: None

There is a power in clause 28(1) for the Secretary of State to give a regulated person, or an associated company of such person, a direction to do or not to do a particular thing, or to secure that a particular thing is done or not done, in connection with any spaceflight activities or provision of any range control services, if the Secretary of State considers it necessary or expedient to discharge or facilitate the discharge of any international obligation of the UK.

Context and purpose

161. This enables the Secretary of State to give directions to ensure that the international obligations of the UK are complied with.

162. Clause 30 makes further provision about directions under this clause including restrictions on disclosure and enforcement. Directions are subject to review.

Justification for delegation

163. As this power is to be exercised in general cases which cannot be specified with any particularity, these cannot be anticipated in primary legislation.

Justification for procedure selected

164. This power is not subject to parliamentary procedure but before issuing a direction to any person the Secretary of State must consult that person. However in an urgent case consultation is only required if practical (see clause 29(5)).

Clause 32 Power to authorise entry in emergencies

Clause 32(1) There is power for the Secretary of State to grant an enforcement authorisation if satisfied as to the matters in subsection (1) (conduct or expected conduct of persons involved in or associated with spaceflight activities gives rise to a serious risk of the type listed in subsection (1)(a).

Clause 32(2) An enforcement authorisation authorises a named person to do anything necessary for protecting national security, securing compliance with any international obligation of the UK or protecting the health and safety of persons.

Clause 32(5) An enforcement authorisation may authorise entry on to specified premises at any time on production of the authorisation.

Clause 32(6) The powers include the power for the person named in the authorisation to take with him or her another person authorised by the Secretary of State or, if the named person has reasonable cause to believe he or she will be obstructed, a constable, and power to use reasonable force of necessary.

Clause 32(7) The enforcement authorisation remains in force for 48 hours from the time it is obtained.

Power conferred on: Secretary of State

Power exercisable by: Secretary of State

Parliamentary Procedure: None

Context and Purpose

165. An enforcement authorisation is intended to be used in very serious and urgent cases, where national security, the UK's international relations or public health and safety are imperilled, and there is no, or insufficient,

time to apply for a magistrate's warrant authorising entry or direct action under clause 31.

Justification for delegation

166. As this power is to be exercised in serious and urgent cases which cannot be specified with any particularity, these cannot be anticipated in primary legislation.

Justification for procedure selected

167. This power is not subject to parliamentary procedure but before issuing an enforcement authorisation to a named person the Secretary of State must be satisfied both that the authorisation is warranted and (subsection (3)) that the person to whom it is to be issued is qualified to carry out the action authorised by it. The authorisation must be in writing and must specify the authorised action (4) and expires after 48 hours.

Clause 33 Liability of operator for injury or damage etc.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 33(3) There is a power to make regulations prescribing categories of person taking part in spaceflight activities to whom the strict liability of the operator in respect of injury and damage does not apply.

Clause 33(5) There is a power to make regulations to limit the amount of liability of the holder of an operator licence in respect of injury or damage sustained in prescribed circumstances or by persons of prescribed descriptions.

Clause 33(6) There is a power for regulations under subsection (5) to provide for the limit on liability of an individual licensee to be determined by the regulator in accordance with the regulations.

Context and purpose

168. Clause 33(2) of this clause imposes a strict liability on a licensee in respect of loss or damage caused to third parties or property on land or water in the UK or in the territorial sea adjacent to the UK, or to aircraft in flight over any such land, water or sea, or persons or property aboard such aircraft, as a result of spaceflight activities. Under the Outer Space treaties, a launching state is strictly liable for loss or damage caused to nationals of another state on land, sea or in the air. Clause 33(2) provides for similar liability on the operator and extends it to damage or injury in the UK. However subsection (3) provides that this strict liability does not apply to any individual of a prescribed description or injury or damage caused by the negligence of the injured person

169. Subsection (5) gives the Secretary of State a power to make regulations that provide for an operator licence to specify a limit on any liability. This cap on liability could apply to spaceflight activities that are licensed or apply to persons or activities where regulations under clause 4(2) exempt them from the requirement to hold a licence. A cap may be necessary to make launch from the UK financially viable, since the legislation of other States, such as the U.S., France and Australia contains such a cap.

170. The subsection gives the Secretary of State power to prescribe the circumstances in which, or persons in relation to whom, a cap may apply. This means the Secretary of State can make the limit on liability cover the circumstances that are deemed appropriate having regard to the development of the industry and the market. Subsection (6) provides for the regulations to enable the regulator to determine a limit on an individual licensee's liability.

171. The persons to be prescribed under subsection (3)(a) will likely be the same individuals who will be required to sign an informed consent pursuant to regulations made under clause 16. These will be people who have knowingly agreed to be involved in spaceflight activities, accepting that not all risk can be eliminated.

172. For the purposes of capping operator liability, there is not necessarily a single figure that could be set in primary legislation. Industry has pointed out there is a huge range of risk profiles and so it may be necessary to set a methodology or a range of figures, as alternatives to a single upper limit figure. In addition, evidence as to market capacity and pricing for third party liability insurance will vary over time. The details are to be consulted on.

Justification for delegation

173. In line with the justification for the power in clause 16(1) to prescribe classes of person, it is difficult to be definitive in primary legislation at this stage, as there may be different levels of risk in respect of different roles and it is appropriate to carefully draw the boundaries of where different rights will apply.

174. Limits on an operator's liability should also be imposed in secondary legislation as and when it is considered appropriate by the Secretary of State. This will enable the Secretary of State to respond more quickly to changes in the insurance market or the spaceflight industry.

Justification for procedure selected

175. The Department proposes that the provisions limiting the right to a strict liability claim should be subject to parliamentary scrutiny and that the negative procedure provides the correct level of such scrutiny. This is because the power to limit such a right and a reasonable level of description concerning the class of person subject to such a restriction is set out in primary legislation. This affords the opportunity of examination at that stage, so that it is not necessary to provide for further debate on the exercise of the power.

Clause 34 Power of the Secretary of State to indemnify

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution (clause 34(1))

Affirmative resolution (clause 34(5))

Clause 34 provides that the Secretary of State may indemnify the holder of an operator licence or a claimant in certain situations where loss or damage is sustained by a person as a result of spaceflight activities carried out by the holder of an operator licence and the operator is liable to that person or another person in respect of that loss or damage. This indemnity from the Secretary of State to an operator or claimant does not apply to loss or damage suffered by an individual of a prescribed description taking part in, or otherwise engaged in, the space flight activities.

Context and purpose

176. The evidence from other States suggests a State indemnity may be required for uninsured losses to avoid the uninjured public suffering loss. This is because the perceived high risk and novel nature of commercial spaceflight activities means that insufficient insurance may be available at a commercial rate.

Power in clause 34(1)(b) to make regulations prescribing the description of individuals taking part in, or otherwise engaged in connection with, spaceflight activities to whom the power to indemnify does not apply.

177. This power needs to be read in the context of the informed consent provisions. It would not be appropriate for the Government to indemnify persons who had voluntarily accepted risk.

178. These individuals are likely to include at least the same classes of person as are excluded from the right to bring a strict liability claim against the operator by virtue of regulations made under clause 33(3)(a). However, the class of person who may not be entitled to be an indirect beneficiary of the indemnity in clause 34 could be wider. Persons prescribed by clause 33(3)(a) are those who may be in sufficient proximity to spaceflight activities to be at risk of direct injury or damage and who give an informed consent to the risks. By contrast, the losses to be indemnified by clause 34 could occur in a wider range of circumstances. For instance, if damage is caused to the property of a person who is contractually, engaged in spaceflight activities (but not themselves carried on a spaceflight operation, nor in any proximity to it), it may not be reasonable for the State to indemnify such persons for losses caused by activity they had helped to facilitate. This is especially the case since such persons are in a position to contractually allocate risk between themselves.

Power in clause 34(5)(a) to make regulations prescribing limits on the amounts the Secretary of State may pay under subsections (2) or (3)

179. This power allows the Government to limit its financial exposure under the indemnities. Both the US and Australian spaceflight legislation, for instance, limit their Governments' financial guarantee.

Power in clause 34(5)(b) to make regulations prescribing cases in which the power under (2) or (3) to indemnify either an operator or a claimant does not arise

180. Examples of situations that may be included in such regulations are:

- where the damage is a result of wilful misconduct on the part of the operator;
- where several parties are at fault and the operator is entitled to exoneration or contribution from others who have insurance and so it is inappropriate for the UK Government to pay.
- Where other States have a liability under the Liability Convention.

181. The Department proposes to consult around the detail of such examples. For instance, even if the starting point were to be not to indemnify in the case of operator wilful misconduct, an exception might be made where an operator's finances and assets have been exhausted by meeting a claim and members of the uninvolved general public have not been fully compensated.

182. The regulations are expected to set out that the indemnity does not apply in purely financial circumstances that are unrelated to physical damage or injury.

Power in clause 34(5)(c) to make regulations supplementing subsection (4)

183. Subsection (4) entitles the Secretary of State to participate in legal proceedings or direct the conduct of the case of a person held liable in such proceedings and regulations may be necessary to supplement this.

Justification for delegation

184. It is not yet known how the spaceflight insurance market will develop or what the financial situation of operators is likely to be. This is likely to be an evolving process. It is therefore prudent to leave the details to secondary legislation.

185. In respect of participation in legal proceedings and directing the conduct of a particular case, secondary legislation may need to make provision for such procedural matters as serving notice of proceedings etc.

Justification for procedure selected

186. The negative procedure is proposed as appropriate for the powers in subsection (1) because these do not fundamentally alter the power conferred on the Secretary of State by this clause, in the way that subsection (5) could potentially do. Subsection (1) is consistent with the public policy expressed elsewhere in the Bill, in relation to persons taking part in spaceflight activities.

187. As regulations made under clause 34(5) may have the effect of:(a) limiting Government liability by capping the amount payable; and (b) dis-applying the power of the Secretary of State to indemnify, (c) supplementing powers to participate in legal proceedings it is considered appropriate that these provisions should be debated in parliament to ensure transparency and due consideration.

Clause 35 Obligation to indemnify government etc. against claims

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution

Clause 35(3)(a) There is a power to make regulations prescribing cases and circumstances where the obligation to indemnify the Government is not subject to a limit imposed under clause 11(2).

Context and purpose

188. This power is available to ensure that the cap on operator liability provided for in clause 11(2) does not apply where this would be inappropriate. This might be where the operator itself is guilty of wilful or criminal misconduct; or where there is a person from whom the operator could seek exoneration who is insured for sums in excess of the cap.

Justification for delegation

189. The delegated power in subsection (3)(a) is there to protect the Government's financial interests. Although the power to impose a cap is expressed as a discretion, there may be circumstances, where it would be justifiable to impose an uncapped liability to indemnify the Government for claims brought against it. The circumstances in which these situations could arise are better set out in secondary legislation to avoid detailed provisions being included on the face of the legislation.

Justification for procedure selected

190. The affirmative resolution procedure is appropriate because the exercise of the power in specified cases would reverse the exercise of discretion to impose a cap on the indemnity in the first place. Greater parliamentary scrutiny is therefore justified.

Clause 37 Insurance

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 37(1) contains a power to make regulations providing for insurance requirements in respect of prescribed risks and liabilities.

Clause 37(2) contains a power to make regulations with the consent of the Treasury providing for insurance or reinsurance to be made available by the Secretary of State to enable compliance with the insurance requirement.

Clause 37(8) contains a power to make regulations prescribing conditions a security must satisfy to qualify as insurance.

Context and purpose

191. Clause 37(1) enables the Secretary of State to make regulations imposing insurance requirements on licensees and other persons engaged in spaceflight activities. This is to ensure that other persons are protected in the event of damage or loss caused by the licensed activities.

192. Clause 37(2) and (3) confers a power on the Secretary of State to make regulations providing for insurance and reinsurance to be made available by the Secretary of State to assist operators to meet their insurance requirements. The Secretary of State may enter into arrangements with any person for this purpose. Such regulations must be made with the consent of the Treasury. This power would assist operators in the event that commercial space insurance is not available for their requirements. By providing for such alternative insurance, it is hoped to benefit the space industry and encourage the commercial insurance market to expand. Reinsurance schemes have been used in other sectors such as flood and terrorist risk as well as in relation to long term personal injury in the nuclear sector,

193. Subsection (8) gives a power to make regulations prescribing the conditions a security must satisfy to be accepted as a form of insurance. This provides the flexibility to permit trust arrangements, deposits or other forms of security to be permitted in the place of a third party insurance policy. Such flexibility is allowed in other States such as the USA and so assists the UK to be competitive. If other arrangements were to be permitted this would be subject to certain conditions that could also be stipulated in regulations or licence conditions.

Justification for delegation

194. There may be a need to stipulate requirements to ensure that insurance cover provided is suitable for its intended purpose, e.g. no unacceptable exclusion clauses. It is necessary to ensure that insurance requirements that are made can be accommodated in the insurance market. The Department therefore feels that it is appropriate that these requirements are set in secondary legislation which enables changes to the requirements to be made as necessary. The power to set a minimum amount of insurance ensures that the necessary level of cover is obtained without imposing onerous financial burdens on licensees.

195. Options would need to be considered in detail before setting up a reinsurance scheme and the level of detail and technical content would not be appropriate on the face of the legislation.

196. The Department proposes that it is appropriate for the conditions under which a security is classed as insurance to be specified in secondary legislation to allow time for consultation with the industry and insurers.

Justification for procedure selected

197. The Department proposes that the negative resolution procedure provides the correct level of parliamentary scrutiny for regulations made under clause 37(1) and 37(8) as these are matters of operational detail. The Department submits that the negative procedure provides the appropriate level of scrutiny for regulations setting up reinsurance and insurance schemes under clause 37(2). These would have been consulted on extensively to ensure their commercial success and viability and therefore not merit parliamentary debate when first made or subsequently amended. In addition any regulations whereby the Secretary of State makes available insurance /reinsurance will require Treasury approval.

Clause 38 Powers to obtain rights over land

Power conferred on: Secretary of State

Power exercisable by: Order

Parliamentary Procedure: Special parliamentary procedure in some cases (subsection 12); none otherwise

Clause 38(1) and (5) contains a power for the Secretary of State to make an Order creating rights over, in or in relation to land, in favour of a qualifying person, including rights of entry and to make consequential, incidental and supplemental provisions.

Clause 48 (amendment and revocation of orders) provides for amendment or revocation of orders made under this clause.

Context and purpose:

198. This clause gives the Secretary of State power to make an order for the purposes set out in subsection (1) creating rights over or in relation to land, in favour of “a qualifying person” (the Secretary of State, a range control licence holder or the holder of a spaceport licence). It is similar to section 44 of the CAA 1982 (which itself was derived from the Civil Aviation Act 1949), but refers to spaceflight activities and spacecraft and carrier aircraft rather than aviation and aircraft.

199. The purposes for which an order may be made are the safe and efficient use for spaceflight activities of land vested in a qualifying person or which a qualifying person proposes to acquire, to secure the provision of services for such land, or to secure that spacecraft or carrier aircraft may be navigated safely.

200. This power is to be used to ensure that spaceflight activities are to be carried out safely by ensuring that services such as electricity or gas that might be required at a spaceport, and installations for safe navigation and the monitoring of activities i.e. radio masts, can be installed

201. Clause 42 and Schedule 7 provide for challenges to the making of such orders by way of quashing orders. Clause 43 and Schedule 8 provide for the payment of compensation where damage is caused in the exercise of the power.

Justification for delegation

202. It is not yet known where spaceports will be and no licences have been granted, so it would not be possible to create rights over land in primary legislation. Even if the first spaceport site were known, the delegated power could be needed for future sites.

Justification for procedure selected

203. An order is subject to special parliamentary procedure if it creates rights over a statutory undertaker's land and the Secretary of State certifies that the enjoyment of the rights would be seriously detrimental to the undertaking.

204. This mirrors subsection (9) of section 44 of the CAA 1982. The special procedure gives those people or bodies who are especially affected by the order a chance to petition against it. This is appropriate to ensure that the rights of statutory undertakers (whose services are relied on by the public) are not adversely affected without good cause.

205. In other cases, the Department submits that requirements to publish a notice in Schedule 6 and processes for consideration of objections made to the making of an order provide sufficient transparency and the opportunity to make representation by those affected.

Clause 40 Power to restrict use of land to secure safety

Power conferred on: Secretary of State

Power exercisable by: Order

Parliamentary procedure: None

Subsection (1) gives the Secretary of State power to make an Order imposing prohibitions or restrictions on the use of land or water as a place for arrival or departure of aircraft or spacecraft in certain cases. It includes a power to specify a spaceport to which the Order relates.

Clause 48 (amendment and revocation of orders) provides for amendment or revocation of orders made under this clause.

Context and purpose

206. This clause enables the Secretary of State to impose by order prohibitions or restrictions on the use of any area of land or water to ensure that spacecraft or carrier aircraft may be safely launched or landed at a

specified spaceport, and to prevent the endangerment of persons or property.

207. For example, an order may be used to prohibit people from entering an area of land close to a spaceport for the duration of a launch window.

208. It is similar to section 45 of the CAA 1982 (which itself was derived from the Civil Aviation Act 1949).

209. Clause 42 and Schedule 7 provide for challenges to the making of such orders by way of quashing orders. Clause 43 and Schedule 8 provide for the payment of compensation where damage is caused in the exercise of the power.

Justification for delegation

210. It is not yet known where spaceports will be, so it would not be possible to create the prohibitions or restrictions or to specify a spaceport in primary legislation. The prohibitions or restrictions under the order may also be temporary and relate to a particular operation.

Justification for procedure selected

211. The Department considers that requirements to publish a notice and processes in Schedule 6 for provision of notice, consideration of objections made to the making of an order and procedure after making the order provides sufficient transparency and the opportunity to make representation by those affected by the order.

Clause 45 Special provisions relating to statutory undertakers

Schedule 9 Powers in relation to land: special provisions relating to statutory undertakers

Power conferred on: Secretary of State

Power exercisable by: Order

Parliamentary Procedure: Special parliamentary procedure in respect of orders under paragraph 4 and in respect of orders under paragraph 5 of Schedule 9 where an objection has been made and not withdrawn.

Clause 45 gives effect to Schedule 9. This Schedule makes provision in relation to orders made under clauses 38 or 40 affecting statutory undertakers.

Paragraph 4(1) gives a power to make an order to facilitate an adjustment of the carrying on of the undertaking necessitated by an order being made or proposed to be made under clauses 38 or 40 or confirmation or proposed confirmation of such an order.

Paragraph 5(1) gives a power to make an order directing that a statutory undertaker is relieved from an obligation absolutely or to a specified extent where the Secretary of State is satisfied that the consequence of making an order under clauses 38 or 40 is that it is

impracticable for a person to fulfil an obligation incurred in carrying out the statutory undertaking.

Clause 48 (amendment and revocation of orders) provides for amendment or revocation of orders made under this clause.

Context and purpose

212. The powers arise where a statutory undertaker makes a representation to the Secretary of State about the effect on its statutory undertaking of an order regarding land. The purpose is to ensure that the statutory undertaker can continue its undertaking. The order may extend or modify the powers and duties of the statutory undertaker as a consequence and may give powers to acquire other land or to construct specified buildings or works.

Justification for delegation

213. These powers would only be exercised if an order in relation to a particular area of land had been made or was proposed. It is not possible to know in advance what changes might need to be made to a statutory undertaker's functions and obligations.

Justification for procedure selected

214. The Department proposes the special parliamentary procedure appropriate for orders under paragraph 4 and for orders under paragraph 5 where there is an unresolved objection, because it gives any persons affected a chance to make representations to Parliament. For orders under paragraph 4 to which there is no objection, the special parliamentary procedure is not needed because paragraph 6 requires notice to be published and gives persons affected an opportunity to make objections.

Clause 51 Offences aboard spacecraft: supplementary

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

There is a power under clause 51(1) to make regulations providing for the application of listed provisions of the CAA 1982 to apply with or without prescribed modifications, or to make corresponding provision.

Context and purpose

215. The listed provisions are section 94 (powers of commander of aircraft) and 95 (provisions as to evidence in connection with aircraft) of the CAA 1982 and subsections (4) and (5) of section 92 as they apply by virtue of section 95(5) to that Act. These provisions are relevant to manned, sub-orbital spaceflight activities. The power under this section does not include

the power to modify or make different provision with regard to the mode of trial for the offence, or to specify greater penalties for it.

216. Section 94 of the CAA 1982 Act provides, amongst other things, that the commander of an aircraft in flight may take reasonable measures, including restraint of a person, where he has reasonable grounds to believe:

- that the person has done or is about to do anything on the aircraft while it is in flight which jeopardises or may jeopardise the safety of the aircraft or persons or property on board the aircraft or good order and discipline on board the aircraft; or
- that the person has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under any law of the state in which the aircraft is registered.

217. Section 95 makes provision as to evidence where the testimony of any person is required and the court is satisfied that the person in question cannot be found in the UK.

Justification for delegation

218. The Department proposes to apply with modifications or make corresponding provision for these relevant provisions of the 1982 Act in secondary legislation as part of the wider regulatory framework which will need to be tailored to specific circumstances. In particular, it is envisaged that the provisions will be relevant to manned, sub-orbital activities but will require further consideration as to the best application of those provisions. This will be subject to consultation. Furthermore, such provisions will need the flexibility to evolve with technical advances and changes.

Justification for procedure selected

219. As the power is to apply with modifications or make corresponding provision to existing provisions of the CAA 1982 the Department submits that the negative resolution procedure provides the right level of parliamentary scrutiny needed in respect of application of these provisions to spaceflight.

Clause 53 Offences under regulations

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative procedure

Clause 53(1) provides that the power to make regulations under the Bill includes a power to create offences. Subsection (2) provides that such regulations may provide for offences to be triable only summarily or either summarily or on indictment. Subsections (3) and (5) provides for penalties for offences under such regulations.

Context and purpose

220. This clause provides a power for the Secretary of State to create offences under regulations made under this Act and for those offences to be triable summarily or on indictment. It is necessary to provide for enforcement in respect of breaches of regulations in order to ensure their effectiveness. It is not possible to set out this class of offences on the face of the Bill, because the secondary legislation requirements that such offences would enforce have not been enacted yet. Accordingly, this clause makes general provision so that the necessary provision can be made in the regulations.

221. For an offence under the regulations that is triable either way, regulations may provide for punishment following conviction is on indictment to be imprisonment for a term not exceeding the period prescribed (which may be up to two years), or a fine, or both. Regulations may provide for a fine following summary conviction for an either way offence. In cases of provisions about endangering spacecraft or persons in a spacecraft, the period of five years will apply, instead of two years, on conviction on indictment. Offences triable summarily may be punishable by a fine, or a fine not exceeding a prescribed amount. Regulations may make provision for defences.

222. This clause is subject to restrictions on the exercise of the power set out in clause 51(3) and (4) (offences aboard spacecraft), paragraph 6(2) and (3) of Schedule 3 (safety regulations) and paragraph 4 of Schedule 5 (security regulations).

Justification for delegation

223. Key offences are set out in the primary legislation but an enforcement regime will also be required in relation to the requirements provided for in regulations. The majority of the offences in regulations will relate to whether a person has complied with specific requirements for example in relation to safety or security. The regulatory structure is in the process of being developed and even once the initial framework is developed, it will change further over time. It is not possible to anticipate the regulations and therefore what provision for offences are required. Provision is made in clause 53(3) to (5) for the range of penalties.

Justification for procedure selected

224. Given the power to create offences in respect of any regulations made under the Bill, the Department proposes that regulations creating offences should be subject to parliamentary debate by way of the affirmative resolution procedure.

Clause 55 Defences

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Procedure will be in line with the procedure in respect of regulations creating offences.

Clause 55(4) provides that the power to make regulations creating offences under the Bill may provide for defences in relation to those offences.

Context and purpose

225. The purpose of this clause is to provide a power to create a statutory defence in relation to offences created by regulations made under this Act.

Justification for delegation

226. The Department feels that it is appropriate to provide for statutory defences in relation to offences made under this Bill in line with the power to create offences in regulations.

Justification for procedure selected

227. Where the regulations creating an offence also provide for a defence, the affirmative procedure will apply, by virtue of clause 55(4), which is appropriate to avoid divergent procedures. However where a separate statutory instrument is enacted, to provide for a defence (probably an amendment to an existing offence) the negative procedure would apply as this would be proportionate to that situation.

Clause 58 Civil sanctions

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative procedure

There is a power under clause 58(2) to make regulations making provision, in relation to an offence under the Bill (including an offence under regulations made under the Bill), that could be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (RESA) (civil sanctions). The regulations could include any type of provision listed under Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

Context and purpose:

228. This clause provides a power to provide for a civil sanction to apply in relation to any offence under the Bill instead of a criminal sanction. The regulations could include any type of provision listed under Part 3 of the Regulatory Enforcement and Sanctions Act 2008. The intention is to provide a speedy and tailored approach to enforcement, with civil sanctions available for less serious regulatory breaches.

Justification for delegation:

229. The Department proposes to provide for a regulation making power in respect of civil sanctions to follow the precedent in Part 3 of RESA to make provisions for various civil sanctions by statutory instrument.

Justification for procedure:

230. The affirmative procedure is proposed to be used following the precedent of RESA to enable Parliament to debate the regulations.

Clause 59 Appeals and Schedule 10: Appeals in connection with spaceflight activities

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Clause 59 provides that Schedule 10 has effect. Schedule 10 makes provision for appeals against decisions under the Bill and the Outer Space Act 1986 and for the establishment of panels to hear appeals.

Schedule 10 - Appeals in connection with space activities

Part 1: Appeal Panels

Paragraph 1(1) The Secretary of State must make regulations to establish a panel or panels to consider appeals. Paragraph 1(3) sets out the particular matters the Secretary of State may include in such regulations relating to the establishment and operation of a panel.

Part 2: Rights of Appeal

Paragraph 4(1). There is a power to make regulations to prescribe additional categories of decisions of the regulator under the Bill that can be appealed to a panel.

Paragraph 4(2) There is a power to make regulations prescribing the persons who can appeal against a decision prescribed under sub-paragraph (1).

Part 3: Determination of Appeal

Paragraph 5(3) - Regulations may prescribe the period within which an application for permission to appeal may be made.

Paragraph 10 contains powers to prescribe the form of a panel's determination and time at which it takes effect; the persons to whom copies of the determination must be sent; and about the publication of determinations.

Paragraph 11 - There is a power to make regulations to prescribe the period within which a panel must determine an appeal.

Part 4 Procedure

Paragraph 12(3) - There is a power to make regulations to prescribe the period within which the relevant person must make representations in writing.

Paragraph 13(2) - There is a power to make regulations to prescribe the period within which an application for permission to intervene may be made.

Paragraph 15 - There is a power to make regulations providing for the conduct and disposal of appeals and for supplementing the provisions of the Schedule. Sub-paragraph (3) lists particular types of provision that may be made.

Paragraph 15(4) – Regulations may make provisions enabling a panel to require reimbursement of fees by one party to another.

Paragraph 16 - There is a power to make regulations prescribing fees payable in respect of matters dealt with by a panel.

Context and purpose

231. The purpose of this clause and Schedule 10 is to provide a route of appeal against certain decisions under the Bill and the Outer Space Act 1986 (OSA) (as there is currently no formal appeals process for licences issued under the OSA). This is to ensure applicants have a clear and transparent route to appeal to a Panel which will have the necessary specialist expertise and to avoid imposing a burden on the tribunal services. Regulations will also provide for fees to enable the recovery of costs incurred in providing an appeal system. The appeals process adopted by the Civil Aviation Authority (as prescribed in Part III (Air Transport Licensing) of the Civil Aviation Authority Regulations 1991 (SI 1991/1672)) has been used as a basis for this appeals process where appropriate.

232. The regulations will provide for the constitution of the panel, its powers etc. They will set out the other decisions that are appealable (that are not included within Schedule 10) to a Panel under this Bill or the OSA and the persons who can make such appeals. The regulations will outline the process for appeals and submitting them, the time limits and possibly outline the circumstances when an out of time appeal may be made.

233. Regulations will include procedural regulations for the conduct and disposal of appeals including the appointment of a case handler / secretariat. They will cover the time limits for communicating a panel's decision and will prescribe the fees payable in respect of matters dealt with by a Panel.

Justification for delegation

234. While paragraphs 2 and 3 of Schedule 10 sets out those decisions for which an appeal will definitely be available, it is necessary to have the flexibility to expand the classes of decision to which appeal rights will extend and to reflect any matters developed in secondary legislation. The Department considers that processing licences for spaceflight activities will be complex and technical in nature. Therefore, the ability for the Secretary of State to appoint specialist appeal panels will ensure that these can include relevant experts in respect of different appeals.

235. While Schedule 10 provides some detail concerning the appeals process, it is more appropriate to make detailed provision in secondary legislation, for the following reasons:

- a. This corresponds to the practice for other comparable appeals processes e.g. that in the Civil Aviation Authority Regulations 1991;

- b. Spaceflight is a new and evolving industry and detailed regulation of it has yet to be undertaken in UK. We expect the regulatory process to be refined following consultation and experience, so the appeals process will need to adapt accordingly.
- c. The appeals procedure may vary depending on the complexity of a decision being appealed and so it may be necessary to make different provision for different cases.

236. In respect of fees, there may also need to be different provision for different cases, depending on the complexity of the appeal issues being considered. Fees also need to be up-rated to reflect the true costs of providing an appeal. “Managing Public Money” sets constraints over the way a fee power is used, which mitigates against any abuse of a fee power.

Justification for procedure selected

237. The Department proposes that the negative procedure affords sufficient parliamentary scrutiny in this case. This is because the detail to be fleshed out in regulations is mainly procedural; any exercise of charging powers will be subject to the rules in “Managing Public Money”; and the comparable appeal provisions in the Civil Aviation Authority Regulations 1991 are also subject to the negative resolution procedure.

Clause 61 Charging schemes

Schedule 11 Charging schemes

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Power conferred on: Civil Aviation Authority

Power exercisable by: administrative scheme

Parliamentary procedure: None

Clause 61 provides that Schedule 11 which makes provision for charging in respect of functions carried out by the Secretary of State or the regulator has effect.

Schedule 11 Paragraph 2(1) - there is a power for the CAA to make a charging scheme providing for payment of charges for performing the functions of the CAA under the Bill and specified in the scheme.

Paragraph 3 - there is a power to make regulations setting out charging schemes providing for the payment to the Secretary of State or appointed person (other than the CAA) of charges incurred in performing functions under the Bill and specified in the scheme.

Context and purpose

238. The purpose of clause 61 and Schedule 11 is to enable the recovery of costs of carrying out functions under the Bill in accordance with the principles of “Managing Public Money”. This power to recover costs is exercisable through a charging scheme made by the CAA in respect of its functions under the Bill and through regulations in respect of the functions of the Secretary of State and other appointed persons under the Bill.

239. There is a general duty to recover charges imposed under a charging scheme but provision is made for the charging authority to waive a charge in any particular case.

240. The charging schemes will cover fees charged for processing an application and issuing a licence and on-going monitoring and compliance costs post-issue of a licence. The schemes will set out the charges payable by an applicant before a licence is issued. There will also be schemes in relation to the compliance and monitoring costs an applicant will be required to pay post-issue of a licence. Different schemes will apply to different types of missions and applications.

241. The charges are likely to be structured such that part of the fixed fee would be charged at the point that an application is submitted. The rest of the fixed fee might be spread over certain milestones in the licensing process. Third party costs and the hourly rate of internal technical assessors and inspectors would be invoiced periodically as they are incurred. This will ensure that a licence applicant can only be charged for work undertaken to date in the event that they chose to discontinue their application at any stage of the process.

242. Where a charging authority works jointly with other government departments, the primary regulator and charging authority will recover those costs from the applicant by way of a scheme and reimburse the other bodies for their services.

Justification for delegation

243. The cases where a charge will be made are predominantly for issuing a licence and monitoring the regulated activity. Charges will depend on the complexity of the service being provided and for this reason, it is necessary to make provision for determining the appropriate charge through a charging scheme rather than set out the detail in primary legislation. As experience builds, the services provided may change and provision for this is more easily made through a charging scheme and regulations. It is important to note that charging schemes are subject to prior consultation of interested persons, and take effect from a date set in regulations.

244. Charging schemes may be made by the CAA after consultation of persons likely to be affected by it and the Secretary of State. Any other appointed person is required to persons it considers likely to be affected by the scheme before proposing the scheme to the Secretary of State (paragraph 5 of the Schedule). The Secretary of State is also required to consult before making regulations under paragraph 3 for a scheme under which he or she will impose charges. The Secretary of State must also carry out consultation if he or she proposes to make modifications to a charging scheme proposed by an appointed person.

Justification for procedures selected

245. The Department proposes that the consultation required before making a charging scheme by the CAA or regulations providing for a charging scheme provides sufficient transparency and the opportunity to make representations by those affected. The Department therefore submits that the regulations setting out a charging scheme should be subject to the negative procedure. The different administrative procedure which is proposed for the CAA charging scheme is considered justifiable because CAA already has similar administrative powers to charge for its aviation functions, as set out in section 11 of the CAA 1982.

Clause 64 Agreements with other countries: compliance with requirements etc.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution

There is a power under clause 64(1) to make regulations to provide that compliance with a prescribed requirement or prohibition giving effect to an agreement with another country relating to spaceflight activities may in prescribed conditions and in prescribed circumstances be taken as compliance with prescribed requirements or prohibition in subordinate legislation.

Context and Purpose:

246. The power to make regulations under this clause would allow the Secretary of State to permit requirements in the UK imposed under secondary legislation to be taken as having been complied with, in prescribed circumstances and under prescribed conditions. For example, if agreement has been entered into to meet the health and safety regulations imposed by agreements with another country, this may, in some circumstances, be considered equivalent to compliance with the health and safety requirements imposed in the UK by the Secretary of State.

Justification for delegation

247. Given that it is not feasible to anticipate the range of requirements and prohibitions in other states' legislation and given the possibility that these requirements in legislation in both countries may change from time to time, it is not possible or appropriate to make such provision in primary legislation.

248. This power demonstrates flexibility to operators who wish to operate from the UK and who may already have undergone rigorous licensing processes abroad.

Justification for procedure selected

249. Given the flexibility that this power provides in respect of the treatment of secondary legislation imposing requirements and prohibitions, the

Department proposes that this power should be subject to the affirmative resolution procedure which will allow for debate and close parliamentary scrutiny before the regulations are made.

Clause 65 Use of records and documentary evidence

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

There is a power in clause 65(1) to make regulations to prescribe persons for the purpose of certifying documents as evidence in any legal proceedings.

There is a power in clause 65(3) to make regulations prescribing a person, or a person acting under the control of such a person, who can make or produce a record to which this section applies, that is considered as evidence in any legal proceedings.

Context and Purpose

250. The purpose of subsection (1) is to set out the person or persons who may certify documents as true for the purpose of evidence in legal proceedings. The regulations may set out that such a person would be the Secretary of State, a regulator or appointed person or an employee of one of these people.

251. The purpose of subsection (3) is to set out the person or persons who can make records or produce a record for the purposes of evidence in relation to the position of a spacecraft, messages or signals transmitted to or received from any spacecraft by that person or a person acting under that person's control. Again, the regulations may provide that this could include the Secretary of State, a regulator or an appointed person of one of these people.

Justification for delegation

252. As the list of persons who are appropriate to be prescribed for the purposes of subsections (1) and (3) cannot be known and may change over time, the Department feels it is appropriate for the persons to be prescribed in secondary legislation rather than in primary legislation.

Justification for procedure selected

253. The Department submits that applying the negative procedure provides the appropriate level of parliamentary scrutiny for these regulations and enables updates to be made more efficiently without using parliamentary time unnecessarily for these procedural matters.

Clause 66 and Schedule 12 Minor and consequential amendments

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative procedure if amending primary legislation, otherwise negative procedure.

Clause 66(1) provides that Schedule 12 (minor and consequential amendments) has effect.

Clause 66(2) and (3) provide a power to make regulations providing for consequential provisions that amend, repeal or revoke any enactment passed or made before the Bill or in the same parliamentary session.

Context and purpose

254. This clause gives effect to the minor and consequential amendments contained in Schedule 12. These constitute amendments to the Land Registration Act (Northern Ireland) 1970, Magistrates Courts Act 1980, CAA 1982, Aviation Security Act 1982, Criminal Justice Act 1982, Police and Criminal Evidence Act 1984, Airports Act 1986, Outer Space Act 1986, Police and Criminal Evidence (Northern Ireland) Order 1989, Aviation and Maritime Security Act 1990, Airports (Northern Ireland) Order 1994, Police Act 1997, Transport Act 2000, Sexual Offences Act 2003, Criminal Justice Act 2003, Criminal Justice (Northern Ireland) Order 2004, Terrorism Act 2006, Armed Forces Act 2006, Counter-Terrorism Act 2008, Criminal Justice (Northern Ireland) Order 2008, Energy Act 2013 and Modern Slavery Act 2015..

255. Although these consequential changes have been identified, it is possible that other changes may be required and it is considered sensible for the Bill to confer a power for the Secretary of State to make such changes through secondary legislation.

Justification for delegation

256. This delegated power is needed to make any further minor and consequential amendments to other enactments that become apparent during the development of detailed secondary legislation. The Department proposes that it would not be the best use of parliamentary time, and may negate provisions in the Bill, or leave lacunae or legal incompatibility in other legislation, to limit making any additional minor and consequential amendments to primary legislation.

257. Spaceflight is a very complex activity. Although in drafting the Bill the Department has scrutinised related areas of law such as those for aviation and outer space, it is impossible to rule out the possibility that some other rule of law might in future be engaged. Equally, spaceflight or associated activities might need to be brought in scope of other laws, as the possibility of spaceflight activities from the UK would not have been contemplated when they were drafted.

Justification for procedure

258. The Department feels that this provision strikes an appropriate balance – whereby minor and consequential amendments solely to secondary legislation are made by the negative resolution procedure – but

any amendments to primary legislation require approval by resolution of both Houses.

Schedule 12 Minor and consequential amendments

Aviation Security Act 1982

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary Procedure: Negative resolution

Paragraph 4(2) - this paragraph amends the Aviation Security Act 1982 to provide that reference to an aircraft includes a medium-range rocket. It gives a power for the Secretary of State to make an order that reference to an aircraft does not include a medium-range rocket in specified provisions, or that the application of specified provisions to medium-range rockets is modified in respect of matters set out in (a) and (b).

Context and purpose

259. Medium range rockets are not spacecraft for the purposes of this Bill. However, the Department has identified the fact that they are not subject to detailed security regulation currently, as aircraft are. The effect of new subsection (1A) of the Aviation Security Act 1982 will be to bring medium sized rockets in scope of that Act.

260. The power enabling the Secretary of State to make an order that a reference to an aircraft does not include a medium-range rocket in specified provisions, or to modify the application of specified provisions to medium-range rockets is necessary because there will be a different security assessment for an unmanned medium sized rocket, compared to, for instance, a passenger aircraft.

Justification for delegation

261. The new power inserted into the Aviation Security Act 1982 enables flexibility in the application of the provisions of that Act to take into account different craft, which may not have been contemplated when that legislation was enacted. It may be appropriate for the Department to consult on such provisions, but this may be separate from any consultation on spaceflight activities as medium range rockets do not come within scope of this Bill.

Justification for procedure selected

262. In the Department's view, the negative resolution procedure affords the appropriate level of parliamentary scrutiny. It could be argued that detailed provisions for a small number of rockets would not necessarily merit parliamentary debate. This legislation offers Parliament the opportunity to consider the public policy issue of bringing these kinds of rockets in scope of aviation legislation. Any subsequent detail in secondary legislation would be detailed and technical in nature, so use of the

affirmative procedure would be a disproportionate use of parliamentary time.

Airports Act 1986

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary Procedure: Negative resolution

Paragraph 7 - This paragraph amends the Airports Act 1986 to provide that reference to an aircraft includes a medium-range rocket. It gives a power for the Secretary of State to make an order that reference to an aircraft does not include a medium-range rocket in specified provisions, or that the application of specified provisions to medium-range rockets is modified. A new subsection 3(1F) is inserted into the Airports Act 1986, by way of a power for the Secretary of State to make an order in respect of matters set out in sub-paragraphs (a) and (b) thereof.

Context and purpose

263. The context and purpose is the same as for the amendment to the Aviation Security Act 1982. The Department has identified that whilst medium sized rockets, as defined, are not spacecraft, there may be a lacuna in aviation legislation if certain aviation provisions are not applied to them. An example of this is section 32 of the Airports Act 1986 – power to limit aircraft movements at certain airports – could be a provision that may need to be applied to rockets if the growth of rocket technologies makes this necessary.

Justification for delegation

264. This enables flexibility in the application of the provisions to take into account policy and technical developments, recognising that rockets are very different from aircraft. The current minimal regulation of medium sized rockets may be appropriate for now but could give rise to difficulties as more are developed and operated.

Justification for procedure selected

265. In the Department's view, the negative resolution procedure affords the appropriate level of parliamentary scrutiny, as the position concerning rocket technologies will be very fluid over the coming years. This legislation offers Parliament the opportunity to consider the public policy issue of bringing these kinds of rockets in scope of aviation legislation. Any subsequent detail in secondary legislation would be detailed and technical in nature, so use of the affirmative procedure would be a disproportionate use of parliamentary time.

Outer Space Act 1986 ("OSA") –

Prohibition of unlicensed activities

Power conferred on: Secretary of State

Power exercisable by: Order

Parliamentary procedure: Affirmative resolution procedure

Paragraph 8 of Schedule 12 amends section 3(3) of the OSA to provide a power for the Secretary of State to make an Order providing for activities or persons to be exempted from the requirements of a licence by the order itself or by the Secretary of State if he is satisfied that the requirement is not necessary to secure compliance with the international obligations of the United Kingdom.

Context and purpose

266. The purpose of this amendment is to enable an exemption from the licensing requirement along the lines of the exemption available under the Space Industry Bill section 4(2) and to provide for a process and conditions for such an exemption. As the technology in the space sector develops there may be missions that would require licensing as space activities but it would be unnecessarily burdensome on industry to require a licence. An example could be where a person rents capacity on a satellite (telecommunications satellite). This may fall within the definition of a regulated activity but if the person renting the capacity is not physically operating the satellite this activity would not give rise to any concerns regarding breach of the UK's international obligations. Procedural provisions regarding exemptions may be made by the Order.

Justification for delegation

267. The general conditions are set out in the primary legislation as prerequisites before the power to exempt can be exercised but to actually exempt general classes of persons or activity at this stage may be premature. Requiring any classes of exemptions to be set out in Order will operate as an additional safeguard.

Justification for procedure selected

268. The original provision in the OSA section 3(3) for making an order exempting persons or activities from the requirements of a licence was subject to the negative resolution procedure but in order to be consistent with the equivalent provision in this Act (clause 4(2)) the Department considers that the affirmative procedure provides the appropriate level of parliamentary scrutiny.

Charges

Power conferred on: Secretary of State

Power exercisable by: Regulations by statutory instrument

Parliamentary Procedure: Negative Resolution

Paragraph 9 of Schedule 12 removes section 4(3)(d) of the OSA. That provision is replaced by new section 4A (inserted by paragraph 10 of Schedule 12). Currently, section 4(3)(d) of the OSA, provides that the Secretary of State may make regulations requiring the payment of such fees as may be prescribed. This will be replaced with a new section 4A which provides that the Secretary of State may make charging schemes in regulations in respect of the functions performed by the Secretary of State under the Bill. Paragraph 10 makes provisions relating to the charging schemes.

Context and purpose

269. The purpose of these amendments is to ensure that the same charging regimes apply to both licences for space activity issued under the OSA and the Bill to ensure consistency.

Justification for delegation

270. This enables flexibility in establishing charging regimes under regulations. It also aligns with the provision for a charging scheme in clause 61 and Schedule 11.

Justification for procedure selected

271. In the Department's view, the negative procedure affords the appropriate level of parliamentary scrutiny for the reasons given in relation to clause 61.

Aviation and Maritime Security Act 1990

Power conferred on: Secretary of State

Power exercisable by: Order by statutory instrument

Parliamentary Procedure: Negative resolution

Paragraph 16 - this paragraph amends the Aviation and Maritime Security Act 1990 to provide that reference to an aircraft includes a medium-range rocket. It gives a power for the Secretary of State to make an order that reference to an aircraft does not include a medium-range rocket in specified provisions, or that the application of specified provisions to medium-range rockets is modified.

Context and purpose

272. The same rationale applies as above, for the amendments made to the Aviation Security Act 1982.

Justification for delegation

273. The justification is in line with that above for the amendments made to the Aviation Security Act 1982.

Justification for procedure selected

274. In the Department's view, the negative resolution procedure affords the appropriate level of parliamentary scrutiny, for the reasons given in relation to the amendments to the Aviation Security Act 1982.

Airports (Northern Ireland) Order 1994

Power conferred on: Department of the Environment

Power exercisable by: Order by statutory instrument

Parliamentary Procedure: Negative resolution

Paragraph 17 amends the Airports (Northern Ireland) Order 1994 to insert in article 2 a new paragraph 3D providing a power for the Department to provide that paragraph 3A (which states a reference to an aircraft includes a reference to a medium-range rocket) does not apply to specified provisions in the Order or provide for any provisions to apply with specified modifications.

Context and purpose

275. As in the legislation above, this amendment is required because whilst medium sized rockets, as defined, are not spacecraft, there may be a lacuna in aviation legislation if certain aviation provisions are not applied to them. The power enabling the Department to make an order that a reference to an aircraft does not include a medium-range rocket in specified provisions, or to modify the application of specified provisions to medium-range rockets is necessary because there will be a different provisions that are relevant to be applied.

Justification for delegation

276. This enables flexibility in the application of the provisions to take into account policy and technical developments, recognising that rockets are very different from aircraft

Justification for procedure

277. The Department proposes that it is appropriate that the negative resolution procedure should apply in line with the provisions as regards regulations and orders under the Order.

Transport Act 2000

Power conferred on: Secretary of State

Power exercisable by: Direction

Parliamentary Procedure: None

Paragraph 20 provides for an amendment to section 93 (control in time of hostilities etc.) to enable the Secretary of State to give directions to a person appointed by regulations under section 15 of the Space Industry Bill, a person providing range control services, a person who carries out spaceflight activities, a person who operates a spaceport. Section 94 (orders

for possession of aerodromes) to extend to spaceports and any spacecraft found on such spaceports

Context and purpose

278. It is intended that the provisions of the Transport Act 2000 providing powers to the Secretary of State to act in time of hostilities and to take possession of aerodromes should extend to spaceports and persons carrying out spaceflight activities etc. under the Space Industry Bill. This is in order to ensure that the necessary directions can be given if necessary and appropriate.

Justification for delegation

279. This power builds on the existing powers to make directions in the Transport Act 2000 and is appropriate to be included with these powers.

Justification for procedure selected

280. It is not appropriate for directions such as those in this clause to be subject to any parliamentary procedure.

Clause 67 Regulations: general

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution except

(a) Statutory instruments containing regulations under clauses 66(4) and 69 subject to the procedure in those clauses.

(b) Statutory instruments containing regulations under sections listed in subsection (6) subject to the applicable procedure in that subsection.

Affirmative resolution where an Air Navigation Order containing an “affirmative resolution provision” as defined in subsection (8).

Clause 67(1) contains a broad regulation making power, generally for carrying the Space Industry Bill into effect and for the purpose in clause 1(1).

Clause 67(2) provides that the power to make regulations or an order may be exercised for all cases, with specified exceptions or for any specified cases or descriptions of case so as to enable such powers to be exercised flexibly.

Clause 67(3)(a) and (c) contain standard provisions found in most enabling legislation, for instance to make different provision for different areas, or supplemental, incidental transitional, saving or consequential provision including transitional and saving provision about licences and applications for licences under the Outer Space Act 1986.

Clause 67(7) There is a power to make an Air Navigation Order (“ANO”) under the CAA 1982 containing provisions that may be made by regulations under the Space Industry Bill.

Context and purpose

281. The power in clause 67(1) is consistent with that contained in section 60(2) of the CAA 1982, the latter being a power to do anything “generally for regulating air navigation”. Although there are other general regulation making powers under the Bill – most obviously for security and safety purposes, the Department’s experience, particularly with aviation is that this will not cover everything that is needed to regulate such a complex activity.

282. Most obviously the Department anticipates the possibility that regulations may need to be made for environmental purposes – for instance restrictions concerning noise or emissions. A power to implement international obligations relating to spaceflight whether in the multilateral UN space treaties, or bilateral treaties (for instance relating to technology transfer), will also be required.

283. The Air Navigation Order 2016 also demonstrates that powers in relation to specific subject areas may also be insufficient. It contains provisions that do not fall under headings like safety, security or environment – for instance article 251, which relates to filing and approval of tariffs, or article 219 “customs and excise aerodromes”. Indeed, article 96 of the Air Navigation Order 2016, which enables the CAA to regulate rockets to avoid interference with use of airspace, is possible because section 60 of the CAA 1982 is expressed in broad terms.

284. The aviation industry is relatively well understood and the department’s view is that spaceflight offers far more scope for unexpected developments, which is why we seek a broad regulation making power.

285. Clause 67(2) provides a power to exercise the regulation and order making powers flexibly so that it can be exercised to apply to all cases, with specified exceptions and to specified cases or kinds of cases, so as to enable a wide range of choice of provision for different purposes, applied either unconditionally or subject to specified conditions. This is a necessary power in the light of the complex regulatory regime envisaged for the range of spaceflight activities regulated under the Bill.

286. Clause 67(3)(a) and (c) contain customary provisions that recognise a “one size fits all” approach rarely is appropriate and that, transitional or supplementary provisions may also need to be made. For instance, applicable legislation may need to be amended in relation to the technical detail of different type’s spacecraft or fuelling systems or the detailed safety arrangement at different types of spaceport. Transitional provision is necessary to cover the position of existing OSA licensees or persons who have applied for an OSA licence prior to the coming into force of the Bill. Regulations may make consequential provision.

287. Clause 67(3)(b) recognises that spaceflight is inherently extra-territorial in nature. Therefore, relevant regulation needs to apply throughout a regulated operation. For instance, where a UK law requires a specific safety measure on board a spacecraft, the purpose would be negated if the law ceased to apply outside of UK airspace.

288. Clause 67(7) also enables inclusion of regulations under this Act in ANO made under the CAA 1982. It may be more convenient for

stakeholders, in some cases, for provision to sit in aviation secondary legislation, depending on the nature of the provision. An affirmative ANO will be required if the provision to be made within it would require an affirmative resolution procedure to be followed.

Justification for delegation

289. The powers are included in order to ensure that detailed provision can be made in secondary legislation that is not appropriate or necessary to be in primary legislation and to encompass the wide range of scenarios that will need to be regulated.

Justification for procedure selected

290. The selection of either affirmative or negative resolution procedures under this clause are consistent with procedures for counterpart clauses under this Bill and in other enactments.

Clause 69 Commencement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Clause 69(2) enables the Secretary of State to make regulations to appoint commencement day(s) for the Bill and for such regulations to make transitional, transitory or saving provision.

Context and Purpose

291. This clause enables the Secretary of State to bring into force by regulations the provisions in this Act, except clauses 67 to 71 – which automatically come into force the day on the day of enactment. It also confers the standard power to appoint different provision for different days and to make provision transitional, transitory or saving provisions.

Justification for delegation

292. The Department propose that it is appropriate for the Secretary of State to determine the appropriate time to bring provisions of the Bill into force and to do so through regulations which can also make transitional, transitory or saving provision.

Justification for procedure

293. As usual regulations made under commencement powers are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them, commencement by regulations enables provisions to be brought into force at an appropriate time.