

AUTOMATED AND ELECTRIC VEHICLES 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 Automated and Electric Vehicles Bill (“the Bill”) which was introduced into the House of Commons on 18 October 2017. This memorandum has been updated following the House of Commons consideration of the Bill. The memorandum has been prepared by the Department for Transport (“the Department”). 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 description of each power appears in the order in which it is contained in the Bill (schedules are addressed at the same time as the clauses which give effect to them).
3. The Bill contains 10 provisions containing delegated powers, one of which (Clause 17(4)) is a Henry VIII power to make consequential amendments.¹
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.
5. The Department will provide detailed policy scoping notes for the Electric Vehicle measures at the House of Commons Committee stage.

Overview of the Bill

6. The Bill contains three Parts (comprising 20 clauses and one Schedule). In summary, the Bill will provide for:

Part 1

- (a) Automated vehicles

This provision will:

- amend and supplement the provisions in the Road Traffic Act 1988 to make it compulsory for users of automated vehicles to have insurance that covers the technical failure of the automated

¹ See clause 17

vehicle technology (with the Secretary of State maintaining a list of the vehicles or types of vehicle that are automated vehicles); and

- extend the compulsory insurance cover to include 'drivers' who are legitimately disengaged from the driving task so they can also be compensated the same as third parties.

Part 2

(b) Electric vehicles

This provision will introduce powers to:

- improve the consumer experience of electric vehicle infrastructure, through interoperability between networks, technical standards, and open data on infrastructure location and availability;
- require 'smart' capability of electric vehicle charge points so that they can interact intelligently with the electricity grid, and that the protocols be in an open standard; and
- expand deployment of electric vehicle infrastructure, with requirements for provision at motorway service areas and large fuel retailers.

Part 3

(c) General

This part will introduce powers to make consequential provision and power to bring into force provisions of the Bill.

Delegated Powers created by the Automated and Electric Vehicles Bill

Part 1: Automated Vehicles: Liability of Insurers etc.

Clause 1: Listing of automated vehicles by the Secretary of State

Power conferred on: Secretary of State

Power exercised by: preparing and publishing a list

Parliamentary Procedure: None

7. This provision requires the Secretary of State to publish a list of automated vehicles which are in the Secretary of State's opinion automated vehicles within the meaning set out in clause 1(1)(b). Those vehicles that are identified on the

list are within scope of the new insurance requirements of Part 1 of the Bill. The purpose of this power is to allow manufacturers, owners of vehicles, and insurers to know if the extension to compulsory motor insurance in this legislation applies to their vehicle. This will provide certainty to the automotive and insurance industries, as well as clarity to the public. Without this clause, it will be unclear as to which vehicles need automated vehicle insurance, which risks the availability of continuous vehicle insurance, and increases complexity for consumers.

8. The power is administrative, rather than legislative, in character as the Secretary of State has no real discretion as to which vehicles to include and which not to include in the list. The Secretary of State must include vehicles or types of vehicles on the list if in the opinion of the Secretary of State they are “designed or adapted to be capable, in at least some circumstances or situations, of safely driving themselves.” As an administrative decision the Secretary of State’s decision will be open to judicial review.
9. The power applies only to vehicles that are or might be used on roads, or in other public places, in Great Britain. There are no such vehicles currently on roads in Great Britain, and international and domestic road traffic laws are likely to change before they appear on the market. In practice the Secretary of State will need to have regard to whether vehicles or types of vehicles have met international or domestic standards on the safe functioning of automated vehicles that will need to be met before the vehicles can lawfully be used on the roads. This information is likely to be recorded in a vehicle’s registration document. The vehicles in question could therefore be identified either by type (clause 1(2)(a)) or by reference to information in the registration document (clause 1(2)(b)).
10. The power to publish the list will enable the Government to ensure that it is clear to vehicle owners, users and insurers whether a vehicle is within scope of the new insurance requirements.

Part 2: Electric Vehicles: Charging

11. Part 2 of the Bill provides for the regulation of certain aspects of the market relating to the charging of electric vehicles. The market for electric vehicles has begun to grow rapidly over the last few years. Registrations in 2015 exceeded those for the previous four years combined. Innovation is driving the development of the electric vehicle market, and bringing new and improved models to market to meet tightening regulatory requirements and increasing consumer demand. The market for supporting infrastructure has also grown quickly, with Government grant support increasingly replaced by private investment, and several United Kingdom small and medium sized enterprises seeking to secure a profitable share of the future market. With such a fast developing sector comes a lack of control and a challenge in predicting exactly how the market may continue to develop. For example, further diversification around the physical connection between public charging points and electric

vehicles could directly impact on the consumer experience whilst different technologies compete, and may ultimately stall the development of the market. Alternatively, consolidation of the market may take place and consumer concerns be rapidly overcome. For these reasons, Government needs to be able to intervene quickly to address market failures if and when they become a problem. Government wishes to take powers now, so that public intervention can occur quickly when needed, reducing the risk that the market will further fragment whilst powers are sought.

12. The Bill makes provision for improving the means of access by consumers to the use of both public battery powered charge points and refuelling points for hydrogen vehicles (“public charging points”). The obligation will fall on operators of networks of public charging points. There is currently no consistent means of accessing such services and regulations will enable the most appropriate form of access to be mandated, therefore improving the consumer experience.
13. The Bill will also address the physical connection between a public charging point and battery powered or hydrogen vehicle. If the electric vehicle market is to grow there needs to be certainty that vehicles can recharge at most public charging points. There is currently a high degree of standardisation between vehicles and public charging points. However, it may be necessary in the future to legislate in order to secure those levels of interoperability if the market develops greater diversity in public charging point connections.
14. The Bill also addresses a current problem concerning the quality and extent of data publicly available on public charging points. Consumers need to know as a minimum where public charging points are located and whether they are working. The Bill makes provision for improving the consumer experience with regard to the provision of easily accessible information, for example, on the geographical location, availability and price of each point. Currently, there is no consistency in the type or manner of information provided by network operators on their public charging points. The Bill will enable regulations to be made which prescribe the type of information to be provided to the public and its format. Such information to be provided is intended to be openly available and could be made available to the public by operators or pushed to a central repository which will hold data from which the public may gain access to it. This provision should in particular assist those who wish to prepare mapping or smart phone applications to assist the consumer.
15. The Bill will also prescribe certain standards for charge points to ensure that they can transmit and receive useful data, react to it and monitor energy usage. Most importantly, charge points will need to be able to contribute towards the efficiency of the grid by being able to manage energy supply when charging. Regulations would prohibit from sale and installation in the UK a charge point which does not meet the relevant standards. The Bill also seeks to address the current low numbers of public charging points contained in fuel retailers and boost the number of public charging points in service areas. The provisions will apply only to “large” fuel retailers and motorway service operators.

16. The Bill also provides for powers to enforce breaches of the various provisions and provides, in addition to general regulation-making powers, the power to provide for exceptions and make different provision for different purposes. The Bill also provides a power for the Secretary of State to determine that a restriction or prohibition contained in regulations does not apply to a person or charge point.

Clause 8: Definitions

Clause 8(2): (definition of “operator”)

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution for first instrument, and negative resolution for any subsequent instrument

Context and Purpose

17. Most of the powers in Part 2 are exercisable so as to place obligations on the operators of public charging points. The power would allow the Secretary of State to set out the definition of an operator (broadly speaking, a person who owns a public charging point or operates it on behalf of another person) so that it is clear to which persons the obligations apply. It would also allow the definition to be updated as appropriate.

Justification for taking the power

18. The market is developing rapidly and new types of commercial entity may enter the market. Defining “operator” in primary legislation would mean the term is fixed and as a result may not properly reflect the nature of the market at the time any regulations are made. The power would allow the definition of “operator” to be set out in regulations and to be updated, with Parliamentary approval, to track developments in the market.

Justification for the procedure

19. The Department considers that it is important for Parliament to debate the initial definition, so the affirmative resolution procedure will apply in respect of the first exercise of the power. Any further exercise of the power is likely to only be an update to the definition, and so it is considered that the lesser form of scrutiny offered by the negative resolution procedure will be appropriate in such a case.

Clause 9: Public charging points: access and connection

Power conferred on: Secretary of State

Power exercised by: Regulations

Context and Purpose

20. This clause (specifically clause 9(1)(a) and (2)) confers power on the Secretary of State to make regulations which address issues concerning the means by which persons access the services of public charging points for electric vehicles (“access”). Currently, each operator of public charging points can decide on the means of access to its public charging points. As public charging point numbers have grown this has led to a marked lack of consistency which is having a detrimental impact on consumers using electric vehicle charge points.
21. The provision will enable regulations to require a consistent means of access by consumers to electric vehicle charge points and hydrogen refuelling points (for battery-powered and hydrogen vehicles respectively (“public charging points”). Although hydrogen refuelling points are at an embryonic stage, the power will enable the regulatory framework to keep pace with the emerging market and allow the UK to maintain a competitive edge, should the same issues arise as currently affect charge points for battery-powered vehicles.
22. There are presently many ways for a consumer to access charging services, such as membership, smart phone app, card payment and SMS text. Regulations made under this power will enable the Secretary of State to prescribe a standard means of access, whilst ensuring that operators are not constrained should they wish to continue to offer an alternative means of access, such as a dedicated membership. To that extent, any mandated means of access will be a minimum standard to ensure the market is not overly impacted and innovations in access methods can continue to develop.
23. Mandating an access method will result in consumers no longer needing to navigate the many different means of access, but will instead be able to rely on a single access method for each public charging point, irrespective of whether other access methods are offered by an operator. The issue may be resolved however in a different way by requiring that operators cooperate closely in the offering of services to the public, so that access can be granted to multiple operators’ networks via the same access mechanism. Each operator would be required to cooperate with other operators, including for example by sharing data.
24. Alternatively, each operator could be required to agree to its network functioning on a platform which would mean members of the public could access all networks operating on that platform, irrespective of a network’s usual means of access. The decision on what constitutes the most appropriate means of access has not yet been made as the technology is changing fast and will take into account prevailing market conditions. Additionally, it is not yet the right time to decide on whether a means of access or an alternative approach built

² Unless the regulations solely provide for clause 9(3) (see clause 16(6))

around cooperation and sharing is the most appropriate, given the state of the market. However, it is likely that regulations could prescribe:

- a minimum access method for public charging points;
- the standards or protocols which achieve that access;
- how operators can achieve the policy aims through cooperation and shared access to each other's network;
- any additional steps necessary to achieve such cooperation (e.g. new financial, accounting or IT practices);
- that operators must enter their networks onto an external platform for subsequent access by the public;
- a controller for the platform;
- exceptions (there is in relation to Part 2 power in clause 15 to create exceptions and power in clause 16 to make different provision for different purposes).

25. Clause 9(1)(b) and (3) relate to the means by which electric vehicles connect to public charging points ("connection").

26. These provisions apply to public charging points for both battery powered and hydrogen vehicles and the obligation is placed on the operators of public charging points. Vehicle manufacturers are free to equip their vehicles with specific types of connectors and operators of public charging points are also able to choose which vehicle connectors their points will support (known as sockets). However, recent EU legislation has introduced some degree of harmonisation by requiring as a minimum specific connectors for public charge points. Nevertheless, although there is still currently some diversity of connectors and sockets, industry has been moving towards standardised connectors and sockets, aided by the Office for Low Emission Vehicles which requires specific sockets for interoperable reasons as a condition of funding under its grant schemes. Accordingly, there is currently an acceptable level of interoperability between vehicles and public charging points.

27. However, as the market develops and private investment increases and public support consequently decreases, legislation may be needed to ensure current levels of interoperability are not threatened. This will be achieved by mandating any necessary standards to achieve physical interoperability between every public charging point and every vehicle. Such a standard would be a minimum in that it would be open to each operator to continue to offer other types of support through inclusion of other connection mechanisms, should they wish to do so. Additionally, technology and innovation are developing quickly and wireless charging is becoming more widespread. The aim in making regulations under clause 9(3) would be not to stifle further innovation. Regulations could prescribe:

- certain technical specifications or minimum standards of design necessary to achieve the required level of physical interoperability;
- levels of functionality that public charging points must achieve (what they must be able to do and achieve);

- exceptions.

Justification for taking the power

Access provisions

28. The market is at an early stage of development and it is not yet clear which method of access is the most appropriate for the market. It is too soon to determine what legislation is needed in order to improve consistency in access. It will also be important to understand the impact of new EU legislation, which mandates that all public charging points must permit ad hoc access, but does not mandate any specific access method. In order to ensure that the content of regulations can be agreed with industry, and then keep pace with the fast changing sector, power to impose access requirements is more appropriately placed in secondary legislation. This will allow policy to take into account changes in the market, the impact of EU legislation and the current uncertainty of the most appropriate access method.

Connection provisions

29. Currently there is a move towards an acceptable degree of standardisation in the market, however this is likely to change in the future as market investment increases and it is important that the UK is able to maintain a competitive edge with an up to date regulatory framework. The precise solution will depend on the market conditions and the current barriers to interoperability. These will not be known unless or until that situation arises and accordingly it is appropriate to keep the substantive provisions in secondary legislation.

Justification for the procedure

30. The Department considers that it is important for Parliament to debate the initial provision made under clause 9(1), so the affirmative resolution procedure will apply to the first exercise of the power (unless the regulations are wholly made under the power in clause 9(3)). However, any further exercise of the power is likely to only be an update to the initial provision, and so it is considered that the lesser form of scrutiny offered by the negative resolution procedure will be appropriate in such a case. In relation to regulations made under the power in clause 9(3), the Department considers that given the technical nature of this provision the negative resolution procedure provides a sufficient level of scrutiny.

Clause 10: Large fuel retailers etc: provision of public charging points

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution for first instrument, and negative resolution for any subsequent instrument

Context and Purpose

31. This clause confers power on the Secretary of State to require that large fuel retailers and service area operators have on their premises sufficient infrastructure for charging electric vehicles. A shortage of public charging points has been raised as a barrier to use/purchase by existing and prospective electric vehicle drivers. The purpose of this provision is to ensure there are a sufficient number of public charging points and hydrogen refuelling stations (collectively “public charging points”) across the UK, enabling drivers of electric vehicles to make long journeys without fear of breaking down.

Justification for taking the power

32. The power is limited to imposing requirements on large fuel retailers and service area operators in connection with the provision of public charging points on their premises.
33. Clause 10(1)(a) and (b) provides a power for the Secretary of State to prescribe the particular classes of “large fuel retailers” and “service area operators” that will be captured within the requirements. What constitutes a “large fuel retailer” or “service area operator” is a level of detail that is more appropriately set out in regulations. Detailed technical work and consultation would be undertaken with service area operators and large fuel retailers to consider where electric vehicle infrastructure provision would and would not be appropriate. There also needs to be a careful cost/benefit assessment undertaken with input from the industry. We expect that a range of factors would be taken into account in setting any obligations, including:
- The commercial viability of fuel retailers and their forecourts, and service areas, and the effect of mandatory electric vehicle infrastructure;
 - The space available given total land take and existing facilities;
 - The capacity of the local electricity grid, in the case of public charging points;
 - The existing or future proximity of electric vehicle infrastructure within the proximity of the fuel retailer or service area operator.
34. Electric vehicle technologies and the new market for their charging infrastructure are developing and evolving quickly. Delegated powers are appropriate to allow for flexibility and to ensure that the regulations keep up with changes in technology. Regulations would also allow for more flexibility to introduce different requirements for different sized retailers and service area operators, and for different types of electric vehicle infrastructure.
35. The Department considers that regulations are the appropriate level of legislation for imposing detailed requirements of the kind envisaged, for example requirements relating to:
- The number of public recharging points that are required on each type of premises;

- The type of public charging points required;
- Baseline requirements for their hours of operations and support services;
- A requirement that public charging points are supported by back office functions to ensure that they are maintained, online and available.

36. We anticipate that the regulations will need to be updated and change over time as the nature of the public charging point market in the United Kingdom continues to evolve and technology develops.

Justification for the procedure

37. The Department considers that it is important for Parliament to debate the initial provision made under clause 10, so the affirmative resolution procedure will apply in respect of the first exercise of the power. However, any further exercise of the power is likely to only update the provision, but it is still important that Parliament has oversight of this so any amendments to the regulations will be subject to the negative resolution procedure. Where subsequent amendments are minor and technical, there is a risk that the affirmative resolution procedure would not be an appropriate use of Parliamentary time.

Clause 11: Information about public charging points

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution for first instrument, and negative resolution for any subsequent instrument

Context and Purpose

38. These provisions are intended to improve the information that is available to the consumer regarding the location and operation of public charging points for electric vehicles including hydrogen refuelling points (“public charging points”). In order to access services consumers need to know, as a minimum, the location and availability of public charging points. There are currently no statutory duties on operators to provide such information. Operators are free to choose whether and in what form to provide information on their charge points. This lack of consistency is considerably impacting the consumer experience. These provisions are intended to address this situation by mandating that operators of public charging points provide particular information on their points, in a specified format and that such data is available for anyone who wishes to use it.

39. The intention behind making such information publicly available is to enable persons (service providers) who can utilise the information to produce services helpful to the consumer, for example, satellite navigation mapping applications, or smart phone applications. The obligation is to be placed on operators of public charging points and no obligations will be placed on service providers. The types of information which is to be mandated falls broadly into two types,

called static (fixed) or dynamic (real-time) data. The former would include information on the location and nature of a public charging point, as well as access options, payment methods and whether the point was operational. Real-time information would relate to whether the public charging point is currently being used and would be a constant feed of information to ensure accuracy. Both types of data will be mandated in regulations. These regulations could require operators to make the information available, or provide it to an external repository for the information from which public access can be gained. Regulations could prescribe:

- the type of information to be provided to the public, e.g. geographic location, operating times, access and payment options and whether the point is working and currently being used;
- that the information is provided in a specific format and is available on an open and transparent basis;
- that operators must provide the data to a central repository;
- what actions the repository will take with the information;
- how the repository will make information available to the public;
- that the information should be kept updated;
- exceptions and different provision for older types of charge points that cannot generate the data.

Justification for taking the power

40. The market is currently moving in the right direction in terms of the provision of charge point data and that will be aided by recent EU legislation which requires that, when available, operators should make data available in an open and non-discriminatory form. Whilst this does not go as far as the proposed legislation, it will assist in the provision of data and we would wish to wait and see, firstly, how the market continues to develop in terms of data provision and the effect on it of the legislation. It is possible that it will not be necessary to make regulations in those circumstances.
41. Furthermore, if, however a decision is taken that legislation in this area is required, we would need to consult widely with industry before deciding on which model of data provision (make available or push to a central repository for holding that information) is the most appropriate. This is better done therefore at secondary legislation stage.

Justification for the procedure

42. The Department considers that it is important for Parliament to debate the initial provision made under clause 11, so the affirmative resolution procedure will apply in respect of the first exercise of the power. However, any further exercise

of the power is likely to only update the provision, but it is still important that Parliament has oversight of this so any amendments to the regulations will be subject to the negative resolution procedure. Where subsequent amendments are minor and technical, there is a risk that the affirmative resolution procedure would not be an appropriate use of Parliamentary time.

Clause 12: Transmission of data relating to charge points

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution for first instrument, and negative resolution for any subsequent instrument

Context and purpose

49. The purpose of Clause 12 is to ensure that once a smart charging point is installed and data from that point begins flows to specified persons (for example, a distribution network operator (DNO) or the National Grid) that the data is not subsequently disrupted or stopped by the owner or operator of the charging point.
50. The installation of smart charging points will play a significant role in ensuring the demands on the electricity grid are managed properly. This will alleviate risks of blackouts and service disruption and will carry benefits to the consumer. However, such benefits can only properly accrue where the data flow is maintained so that the relevant recipient can build up an accurate picture of demand. As clause 13 bites at the point of installation, Clause 12 is intended to require that the data continues to flow and avoid circumstances where an owner or operator of a charge point switches off the smart functionality.
51. The obligation for a public charging point would be placed on the operator of the charging point. For non-public charging points, such as those in a domestic property, the obligation could be placed on an operator of a domestic charging point where the market moves in that direction. There is no intention to place the obligation on the domestic consumer.
52. The regulations may include:
 - A requirement that infrastructure operators ensure that data continues to be transmitted from their charging points to any persons specified in regulations;
 - A definition of the data that is subject to the obligation. This could include geographical information which is of particular assistance to DNOs and the National Grid
 - A requirement on persons specified in regulations to ensure the same continued flow of data to non-public charging points.

Justification for taking the power

53. There are significant advantages to the use of smart charging points and owners will be strongly encouraged to continue to use them through incentives such as cheaper energy tariffs. However, there remains a chance that the owner or operator of a charging point could stop the transmission of data, for example by switching off a charging point's smart functionality. We do not yet know if that would happen and therefore may need to act swiftly in circumstances where it is clear the relevant parties are not receiving the right data as this will have implications for grid capacity and service. Regulations would only be brought in after consultation with relevant parties to ensure all impacts are fully understood.

Justification for the procedure

54. The Department considers that it is important for Parliament to debate the initial provision under clause 12 so the affirmative resolution procedure will apply in respect of the first exercise of the power. However, any further exercise of the power is likely to only update the provision, but it is still important that Parliament has oversight of this so any amendments to the regulations will be subject to the negative resolution procedure. Where subsequent amendments are minor and technical, there is a risk that the affirmative resolution procedure would not be an appropriate use of Parliamentary time

Clause 13: Smart charge points

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution

Context and Purpose

43. The purpose of clause 13 is to set a requirement that any charge points sold or installed in the UK are 'smart' charge points that can perform certain functions. These 'smart' charge points are required to have the functionality to receive, understand and respond to signals sent by the energy system (e.g. Distribution Network Operators (DNOs), energy suppliers, National Grid or other third parties) for the purposes of balancing energy supply and demand.
44. This obligation to comply with the requirement is on the sellers and installers of charge points. The requirements with which the charge points must comply will be prescribed in regulations. Clause 13(2) sets out the types of ability which the charge points may need, which will be prescribed in regulations. The purpose of clause 13(1) and (2) is to give the Secretary of State the ability to make regulations setting out the basic requirement on sellers and installers and prescribing the requirements to be met in relation to charge points sold or installed by them.
45. The regulations may include:

- The technical standards that a charge point will need to meet in order to comply for it to be sold or installed in the UK. The technical requirements may entail particular performance standards that charge points must deliver, but giving some flexibility on how these could be met, for example:
 - functionality to provide secure wireless electronic communication with third party devices, able to deliver x amount of data transfer with y reliability, or
 - reference specific communication capabilities, for example, wi-fi or GPRS capability.
- A list of persons or devices (e.g. a Network Operator) that the charge point will need to send and receive data to and from. The charge point may also need to react to data received from these persons or devices.
- The requirement that the protocols used are open and accessible so they can interact with other devices. This includes making publicly accessible the necessary protocols to allow the charging infrastructure to communicate, understand and respond to signals or grid balancing.

Justification for taking the power

46. The technology for charge points is evolving rapidly, and we need the flexibility to amend the requirements quickly to keep up with new technologies and technical standards. If the regulatory framework cannot keep pace with new technologies or practices it may stifle innovation for products which may come onto the market but which do not meet the existing technical specifications. It is considered that legislating by regulations offers the flexibility that is needed in this context.

Justification for the procedure

47. The Department considers that the negative resolution procedure affords the appropriate level of scrutiny in the case of regulations under clause 13. Clause 13(1) only gives a limited power to the Secretary of State to make regulations that provide that a person must not sell or install a charge point unless it complies with prescribed requirements. This is a narrow power and the regulations cannot deviate far from the primary legislation in this regard. The broader regulatory making powers are to prescribe the requirements for functionality, which are set out in a non-exhaustive list at clause 13 (2). As these requirements are technical in nature, it is considered that the negative resolution procedure is appropriate.
48. As mentioned above, the technical specifications that will ensure that charge points have the desired functionality are likely to vary over time. Changes to the technical standards will be made to ensure that the requirements remain in step with the market and the pace of innovation; there are unlikely to be policy issues that require in depth Parliamentary debate and consideration.

Clause 14: Enforcement

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution for first instrument, and negative resolution for any subsequent instrument

Context and Purpose

55. Clause 14 confers a power on the Secretary of State to set out an enforcement regime to ensure compliance with the regulations made under this Part. The clause provides for a civil enforcement regime. The regulations will set out the process for determining whether someone is in breach of any requirement or prohibition imposed by regulations under the Part. Regulations about enforcement may provide that:

- An agency may be appointed on behalf of the Secretary of State, to monitor and enforce requirements under the regulations;
- Suspected breaches of the requirements would be identified by the monitoring activity of the appointed agency or by a case raised by a customer or competitor;
- An appointed agency may impose a civil penalty on such parties that are deemed to be non-compliant with any requirements of the regulations;
- An appeals process will apply.

56. Clause 14 clarifies the sorts of powers that may be provided to the enforcement body in determining whether a breach of the Regulations has taken place. These include a power to:

- Enter any land for the purposes of the Regulations
- Require the production of documents or information;
- Make photographs or take copies;
- Remove any thing for testing or inspection.

Justification for taking the power

57. As the primary obligations will be set out in regulations, it follows that the regulations that provide the primary obligations should also provide for the enforcement of those obligations. The enforcement procedure will need to

reflect what is set out in the regulations. It is also considered more convenient for those using the legislation to have the underlying requirements, and the enforcement procedure, in the same place i.e. in regulations. There are no new criminal offences being created, the power only allows for civil penalties. Any civil penalties will not be retrospective. It is commonplace to set out civil penalty regimes in secondary legislation. In developing the proposed primary obligations, including through consultation, other means of ensuring compliance were considered but no effective alternatives to enforcement were identified.

Justification for the procedure

58. The Department considers that it is important for Parliament to debate the initial provision under clause 14 so the affirmative resolution procedure will apply in respect of the first exercise of the power. However, any further exercise of the power is likely to only update the provision, but it is still important that Parliament has oversight of this so any amendments to the regulations will be subject to the negative resolution procedure. Where subsequent amendments are minor and technical, there is a risk that the affirmative resolution procedure would not be an appropriate use of Parliamentary time.

Part 3

Clause 17: Power to make minor and consequential amendments

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative or Negative resolution

59. Clause 17 provides the Secretary of State with a general power to make consequential provision in relation to any provision of the Bill. The power includes power to amend primary legislation passed before the end of the Session in which the Bill is passed.
60. The Department considers that the affirmative resolution procedure is appropriate in cases in which the power is exercised in relation to primary legislation (see clause 17(5)) and the negative resolution procedure is appropriate in all other cases (see clause 17(6)). In either case, the power is very much a reserve power in case any necessary changes have not been identified.

Clause 18: Commencement

61. Subsection (1) provides for the provisions of the Bill to come into force on such day as the Secretary of State may appoint by regulations. As is usual with such commencement powers, it is not subject to any Parliamentary procedure.

30 January 2018
Department for Transport