



HOUSE OF LORDS

Select Committee on the Constitution

11th Report of Session 2017–19

Haulage Permits and Trailer Registration Bill [HL]

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are Matt Korris (Clerk), Nadine McNally (Policy Analyst), Lloyd Whittaker (Committee Assistant). Professor Stephen Tierney and Professor Mark Elliott are the legal advisers to the Committee.

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Haulage Permits and Trailer Registration Bill [HL]

Introduction

1. The Haulage Permits and Trailer Registration Bill [HL] was introduced in the House of Lords on 7 February 2018. Its second reading took place on 27 February. The Bill makes provision to support UK hauliers to continue to operate internationally after the UK leaves the European Union.

Framework legislation

2. The Bill is a framework bill. It gives broad powers to the Secretary of State, by regulations, both to introduce administrative systems for haulage permits and for a trailer registration scheme. Much of the detail on how these regimes are to be put in place is left to secondary legislation. In the absence of policy detail or illustrative regulations, it is not at all clear how these powers will be used or indeed whether they will be used. The Delegated Powers and Regulatory Reform Committee (DPRRC), in its report on the Bill, described it as “wholly skeletal, more of a mission statement than legislation.”¹
3. The UK’s departure from the European Union may require the Government to make new law and enable new regimes at short notice, depending on the outcome of the Brexit negotiations and any new relationship agreements. However, **bills that grant broad powers to ministers, on the basis of no clear policy, are difficult for Parliament to scrutinise and present a fundamental challenge to the balance of power between Parliament and the executive.**
4. The DPRRC recommended that some of the powers in the Bill, particularly those which may prove unnecessary, should be subject to sunset clauses, extendable if necessary.² **We agree with the Delegated Powers and Regulatory Reform Committee that the inclusion of sunset clauses would mitigate the constitutional concerns raised by the broad powers in the Bill and the uncertainty as to how they might be used.**

Delegated powers and criminal offences

5. The DPRRC noted that all the powers in the Bill are subject to the negative procedure. It proposed a sifting procedure be established for regulations under clauses 1 and 2, such that instruments that require greater parliamentary scrutiny can be upgraded to the affirmative procedure.³ **We agree with the Delegated Powers and Regulatory Reform Committee that the Bill should include a sifting process for instruments made under it.**
6. We draw particular attention to clauses 8 and 17, which allow for the creation of criminal offences by regulation subject to the negative procedure. Although the proposed offences will be of a minor nature, given the lack of policy detail, it is difficult to assess the significance of these powers.

1 Delegated Powers and Regulatory Reform Committee, *Haulage Permits and Trailer Registration Bill [HL]* (15th Report, Session 2017–19, HL Paper 84), para 2

2 *Ibid.*, paras 8 and 15

3 *Ibid.*, paras 9 and 13

7. **If there are exceptional circumstances which require the creation of criminal offences by regulations, they should normally be subject to the affirmative procedure. A sifting process for regulations under this Bill would allow for regulations creating new criminal offences to be upgraded to the affirmative procedure, where appropriate.**