HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

20th Report of Session 2017–19

European Union (Withdrawal) Bill: Government Response

Haulage Permits and Trailer Registration Bill [HL]: Government Response

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

(i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;

(ii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,

(b) section 7(2) or section 19 of the Localism Act 2011, or

(c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

(iii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) section 85 of the Northern Ireland Act 1998,

(b) section 17 of the Local Government Act 1999,

(c) section 9 of the Local Government Act 2000,

(d) section 98 of the Local Government Act 2003, or

(e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

Lord Blencathra (Chairman)
Lord Flight
Lord Jones
Lord Lisvane
Lord Moynihan
Lord Rowlands
Lord Thomas of Gresford
Lord Thurlow
Lord Tyler

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprrcpublications.

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Contacts for the Delegated Powers and Regulatory Reform Committee

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Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Twentieth Report

EUROPEAN UNION (WITHDRAWAL) BILL: GOVERNMENT RESPONSE

1. We considered this Bill in our 12th Report of this Session.[1] The Government have now responded by way of a letter from Lord Callanan, Minister of State for Exiting the European Union at the Department for Exiting the European Union, printed at Appendix 1.

HAULAGE PERMITS AND TRAILER REGISTRATION BILL [HL]: GOVERNMENT RESPONSE

2. We considered this Bill in our 15th Report of this Session.[2] The Government have now responded by way of a letter from Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport, printed at Appendix 2.

1 Delegated Powers and Regulatory Reform Committee, (12th Report, Session 2017–19, HL Paper 73)
2 Delegated Powers and Regulatory Reform Committee, (15th Report, Session 2017–19, HL Paper 84)

APPENDIX 1: EUROPEAN UNION (WITHDRAWAL) BILL: GOVERNMENT RESPONSE

Letter from Lord Callanan, Minister of State for Exiting the European Union at the Department for Exiting the European Union, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

Thank you for your Committee's report of 1 February on *The EU (Withdrawal) Bill*. The report contained a thorough analysis of the key issues as the Bill progresses to the next stage.

Since this report was published, the Bill has been scrutinised for over 115 hours of debate in Lords Committee. The Government has listened carefully to the views of all members of the House of Lords about the Bill and suggestions for where improvements could be made.

Your Committee's report and the contributions of Committee members during the debates have greatly assisted this process. The Government appreciates the work and rigorous scrutiny of your Committee in relation to the Bill and our exit from the EU more generally. The Government has already tabled some amendments to the Bill for Report stage. We plan to bring forward further amendments to the delegated powers and devolution provisions of the Bill as it progresses through Report Stage and I have indicated in this response where this is the Government's intention.

I welcome this report and set out the Government's response below.

I hope we can find further opportunities for dialogue as the Bill progresses through Parliament.

ANNEX A - Government response to report recommendations

Clause 7 & 8- Deficiencies arising from withdrawal & complying with international obligations

The subjective "appropriateness" test in clauses 7 & 8 should be circumscribed in favour of a test based on objective necessity.

As the Committee will appreciate, the Bill is responding to an unprecedented situation. To ensure legal certainty and continuity after the UK leaves the EU, it is necessary to transfer a vast amount of EU law onto our statute book, including thousands of EU Regulations. As such, it is vital that the Government has appropriate powers to make secondary legislation to ensure that this law operates effectively.

The Government is committed to making sure that the good reasons for the SIs made under the powers are transparent to Parliament to enable full and effective scrutiny by the legislature and place an adequate check on the legislative proposals of the executive. To demonstrate this commitment the Government intends to bring forward an amendment in relation to clauses 7, 8 and 9 of the Bill in line with the "good reasons" and "reasonable course of action" amendments made to the Sanctions and Anti-Money Laundering Bill. The clause 7 power has always been intended only to make such changes as are appropriate to correct deficiencies arising from withdrawal. Other primary legislation, such as the Sanctions and

Anti-Money Laundering, Trade and Nuclear Safeguards Bills will bring forward new policy.

In the face of a task of the scale of preparing our statute book for exit, what has always been clear is that the Government would need relatively broad delegated powers to deliver a functioning statute book and the Government believes that there has been relatively broad acceptance of the need for a power with this purpose.The Government has already increased Parliamentary scrutiny and reduced the scope of the delegated powers. However, what we cannot do is significantly restrict the scope of these powers as we believe the Committee's recommendation would do.

The Government recognises there is a degree of subjectivity to the word 'appropriate', but, as we wrote in our last letter to the Committee, that is true of almost all tests, and it is important to acknowledge that there are limitations on the power.

I would like to clarify that there are three distinct tests which circumscribe the use of the power in clause 7. First, for the power to be engaged at all, it is necessary to identify a deficiency in retained EU law, as outlined in clause 7(2). Secondly, it must be appropriate to correct that deficiency, and thirdly, the action taken by ministers must be appropriate to correct it. We would argue that this is the correct way to circumscribe the power.

It is certainly true that 'appropriate' is a broader term than 'necessary', but when the courts turn to interpret broad discretions, they construe them in the context in which the powers have been conferred by Parliament. As *Craies on Legislation* notes, the more apparently wide a power is, the more the courts will feel obliged to impose some kind of limitation based on the context and probable legislative intent.

Your report also asserts that 'necessity' is an objective test whilst 'appropriateness' is a subjective test. However there is an element of subjectivity in 'necessity' too. There is a degree of subjectivity in almost all tests, but it is important to recognise that the current drafting does set limits on the exercise of this power.

Tertiary legislation made under both clauses 7 & 8, should be subject to the same parliamentary control and time-limits as are applicable to secondary legislation.

The Government appreciates the Committee's recommendation in relation to the parliamentary control of tertiary legislation. However, if powers delegated under the powers in the Bill could not be used in the future, the UK's domestic legal order would quickly become inoperable.

The Government is committed to proper scrutiny, which is especially pertinent in regard to the creation of delegated legislative functions. To support this essential scrutiny, the Government intends to make an amendment requiring Ministers to explain why it is appropriate where they provide for legislative function to exercised other than by a Minister through SIs and for an annual report on the exercise of those powers to be laid before Parliament.

The Government does believe that it is appropriate to provide for the making of tertiary legislation. There are areas where regular updates are required, for example for the regulation of chemicals the ability to react quickly is of real importance for public safety and health. As such, relevant policy specific delegated powers

will be needed after the sunsets of the powers in the Bill to ensure the continued functioning of these regimes.

We are aware of the concerns expressed in relation to the transparency and scrutiny of new powers being vested in UK ministers and other public authorities under this Bill and the Government is listening to that and will reflect closely upon it. The Government is very wary, however, of a one-size-fits-all solution to scrutiny.

The Government remains of the position that delegated powers granted under the powers in this Bill will be needed for the foreseeable future. The right way to address the exercise of delegated powers transferred, or granted by the SIs under this Bill, is for Parliament to scrutinise the SIs transferring those powers and the conditions they set out closely and carefully.

The Government should demonstrate a convincing case (if one exists) before the supremacy of the House of Commons in financial matters gives way to taxation by statutory instrument in clause 8.

We respectfully disagree with the notion that the clause 8 power is in any way undermining the supremacy of the House of Commons in financial matters. This notion seems to stem from the idea that secondary legislation is purely a function of the executive, in which Parliament is sidelined.

However, it is now confirmed that there will be a Committee established in both Houses to sift the statutory instruments which the Government is proposing should be subject to the negative scrutiny procedure, including instruments under clause 8. It seems a fair assumption that those Committees will bring Parliament's attention to any instruments that they deem particularly controversial and the Government expects that it will usually follow the recommendations of the sifting Committees. Although the imposition of tax (outside of charging in respect of functions) is not included in the list at paragraph 6(2) of Schedule 7, a minister could choose to use the affirmative procedure and, in such cases, Parliament would debate and vote on the SI before it was made. Where the negative procedure is followed, the instrument can be annulled by a resolution in either House of Parliament. Therefore we do not believe this undermines the supremacy of the House of Commons in financial matters, as the House can ultimately have the final say in *any* exercise of the clause 8 power, including in financial matters.

To reiterate, we do not envisage making broad changes to the tax system with the clause 8 power. As stated in the House, the clause 8 power can only be engaged for the particular purpose of preventing a breach of the UK's international obligations, resulting specifically from our EU withdrawal. The lack of tax restriction on clause 8 reflects that some of these obligations may be in the field of tariffs or other preferential tax treatment - though it is of course impossible to know the full picture until our future relationship with the EU has been negotiated and the final details of any transitionally adopted agreements with third countries are clear. If clause 8 had a similar restriction on imposing or increasing taxation as the other main powers do, then we may not have the capability to remedy these breaches in all circumstances.

To restate the point, the power can only be used for the specific purpose of ensuring continuing compliance with international obligations to which Parliament has already consented and which would be affected by the UK's withdrawal from the EU. It is only available for a limited period of time and any further restriction risks increasing the primary legislative burden on this House and weakening the

UK's promise to the rest of the world that we are ready and able to honour our commitments.

Clause 9- Implementing the withdrawal agreement

The power in clause 9 for Ministers to amend or repeal the European Union (Withdrawal) Act by regulations is wholly unacceptable. Following its amendment in the House of Commons, clause 9 as a whole is no longer necessary and should be removed from the Bill.

The Government's position is that the major policies in the Withdrawal Agreement will be given effect domestically via the Withdrawal Agreement and Implementation Bill. However, the Committee's recommendation does not reference that there are likely to be a significant number of technical changes which are not appropriate for primary legislation and would therefore be better suited to secondary legislation. These could be made through clause 9.

We recognise the point made by the Committee but we also respect the Commons' decision to amend, rather than remove, clause 9 from the Bill. After changes made during Commons Committee, however, the use of the power is subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the UK from the EU. The clause 9 power is therefore already subject to exceptional constraints.

While the Government does not accept the Committee's recommendation of removing the clause altogether, we do recognise the House's concerns around the power and, in line with our commitment to not taking unnecessarily broad powers, we intend to bring forward amendments to narrow the power to prevent it from being used to impose or increase fees (as with clause 7), establish public authorities (as with clauses 7 and 8) or amend the Bill itself.

As the Government outlined in the House, it is vital that we are prepared for scenarios where we need to modify any Act to give effect to the Withdrawal Agreement in domestic legislation. It is recognised both on the opposition benches and by the Government that in our preferred negotiated outcome, some amendments may have to be made to the EU (Withdrawal) Act, for example to facilitate an Implementation Period. This is an inevitable consequence of the uncertainty that arises from an ongoing negotiation. The Government's plans to implement major policies in the Withdrawal Agreement will be given effect domestically via the Withdrawal Agreement and Implementation Bill and expects to make any appropriate modifications to the EU (Withdrawal) Act under the Withdrawal Agreement and Implementation Bill. As mentioned above the Government will therefore be removing the ability to amend the EU (Withdrawal) Act from clause 9.

Clause 11- Devolution

The Order in Council powers in clause 11 and Schedule 3 are inappropriate and should be removed. Separate Bills should be introduced in Parliament to provide for the conferral on devolved institutions of competences repatriated from the EU.

The Government will consider the points raised by the Committee in its report, and in the debate on this matter in relation to the corresponding amendments tabled by Lord Blencathra, as Chair of the Committee. We have, however, been clear that Orders in Council are an established mechanism for altering devolved

competence, as evidenced by the powers contained in section 30 of the Scotland Act 1998, section 109 of the Government of Wales Act 2006, and section 4 of the Northern Ireland Act 1998.

The Committee will no doubt wish to reflect on the amendments proposed by the Government to clause 11 at Committee Stage. These would remove the current clause 11 constraint on devolved competence in relation to retained EU law and, in doing so, would remove the Order in Council procedure for releasing those competencies. The Committee may also wish to note the confirmation, given by the Advocate General for Scotland during the Committee Stage debate, that where future frameworks are to be established by legislation, this will be by way of primary legislation.

Clause 17- Consequential and transitional provision

The powers to make consequential provision conferred by clause 17(1) should be restricted by an objective test of necessity rather than being left to the subjective judgment of the Minister as to what is appropriate.

Where regulations under clause 17(1) amend or repeal primary legislation, the affirmative procedure should apply in accordance with established practice.

Regulations under clause 17(1) and (5), other than those which amend or repeal primary legislation and which should be affirmative, should be subject to a sifting mechanism.

We are grateful for the Committee's recommendations regarding clause 17. We believe our arguments in relation to the distinction between appropriate and necessary apply equally to clause 17 as to clauses 7 and 8 above. As such, restricting the clause 17(1) power to an objective test of necessity, would significantly risk the Government's ability to deliver a tidy and effective statute book, which is desirable for businesses and individuals.

The Government is aware of and understands the concerns relating to the scrutiny of the clause 17 powers and is considering a way forward that addresses these. Though to make clear, making consequential and transitional provisions through SIs is a standard approach in legislation, and the minister is given a discretion to make appropriate provision in significant constitutional legislation such as the Government of Wales Acts 1998 and 2006, the Constitutional Reform and Governance Act 2010, the Scotland Act 2016 and the Wales Act 2017.

Regarding the Committee's recommendation to make regulations that amend or repeal primary legislation subject to the affirmative scrutiny procedure, the Government believes that whether a consequential amendment needs to be made to primary or secondary legislation does not change the significance of the amendment. The consequential power is tightly circumscribed by its nature and is not a vehicle by which the Government will deliver significant policy change. It is a tool to ensure that the statute book properly reflects the widespread changes made by this Bill, particularly the repeal of the European Communities Act 1972 (ECA). We therefore believe that the procedure given in the Bill for the exercise of the power is proportionate, as we anticipate a large number of fairly straightforward and insignificant changes, to the scale of the changes which will be made.

As it currently stands, the sifting process will cover only the main powers in the Bill rather than any consequential and transitional provisions made under clause

17 where the negative procedure applies. The sifting process was tabled by the Procedure Committee of the House of Commons, and is a time-limited measure to oversee ministerial discretion in choosing procedure in relation to the exercise of the main powers in the Bill. The Government believes that, given the more limited scope of the powers in clause 17, the scrutiny provisions are appropriate, however, we understand the strong views expressed by the Committee and during Lords consideration of the Bill, and will reflect on how best to address the concerns raised.

Schedule 4- Fees and charges

Taxation, including "tax-like charges", should not be possible in fees and charges regulations made under Schedule 4. Fees and charges for services or functions should operate on no more than a full cost-recovery basis. Taxation should be a matter for Parliament, a principle enshrined in Article 4 of the Bill of Rights 1688.

As noted by the Committee's report the Bill of Rights requires that Parliament approve all taxation. In bringing Schedule 4 before Parliament the Government is doing just that. Schedule 4 is designed to ensure that those using specialist services transferred from the EU to the UK, pay for them.

The Government is listening to the concerns raised in the debates on Schedule 4 our intention is to bring forward, in addition to other amendments to Schedule 4, an amendment to sunsetting the power which permits the creation of new fees and charges in line with the power which permits the transfer of functions for which fees and charges can be levied.

While the Government recognises the Committee's recommendation applies to both taxation and "tax-like charges" these are definitions which cover a broad range of activities in line with well established practice on the funding of public services. For example a charge is argued by some to be "tax-like" if it cross-subsidises to construct a progressive regime between large multinationals and small enterprises; if it is a compulsory levy in a regulated and surveilled sector such as banking; or if it funds the broader functions of an organisation not directly part of the cost of providing a service, such as enforcement. Establishing charging regimes on such bases has been within the range of standard practice and the delegated powers in the Finance Act 1973 for charging in connection with our EU obligations for some time.

As part of providing continuity, this Bill should enable the Government to continue to fund public services in an appropriate manner. But to make things clear, the Government has directly prohibited the increase or imposition of taxation under clause 7, and instead put forward this bespoke power.

Without this the Bank of England, for example, would not be able to bring Trade Repositories, a vital piece of Financial Market Infrastructure currently supervised at the European Level, within the scope of its levy based funding regimes.

Schedule 4 should not permit fees or charges to be levied by tertiary legislation. All regulations imposing a fee or charge under Schedule 4 should be made by statutory instrument either by UK Government Ministers or by Ministers in a devolved administration, using the affirmative procedure.

The sub-delegation of powers to set fees and charges under Schedule 4, like any other form of sub-delegation under this Bill, must be approved following the

affirmative procedure and include provision about how that sub-delegated power will be exercised.

The Government is committed to proper scrutiny, which is especially pertinent in regard to the creation of delegated legislative functions. To support this essential scrutiny, the Government intends to make an amendment requiring Ministers to explain why it is appropriate where they provide for legislative function to exercised other than by a Minister through SIs and for an annual report on the exercise of those powers to be laid before Parliament.

This power for new fees and charges in Schedule 4 is only available if the public authority is taking on a new function under this Bill and the fees and charges must be in connection with relation to that function. This is not a general power for the Government or any other public authority to raise money.

The Government envisages sub-delegating this power in limited circumstances, for example, where Parliament has already granted the power to set up its own rules for fees and charges of the type envisaged by this power to a public authority before exit, and, for good reasons, made them independent of the Government. In line with the Bill's aim to provide continuity, Parliament should have the option of approving authorities like the Financial Conduct Authority and the Bank of England being able to independently make fees and charges for firms who will, after exit and under this Bill, fall under their regulatory remit.

As set out above the Government remains of the position that delegated powers granted under the powers in this Bill will be needed for the foreseeable future. The right way to address the exercise of delegated powers transferred, or granted by the SIs under this Bill, is for Parliament to scrutinise the SIs transferring those powers and the conditions they set out closely and carefully.

The affirmative procedure should apply to all regulations relating to fees and charges made under Schedule 4, either in both Houses of Parliament or in the relevant devolved legislature.

We are sympathetic to the concerns of the House in relation to the powers to provide for fees and charges in Schedule 4 and intend to bring forward amendments to make all regulations subject to the affirmative procedure unless they are only adjusting for inflation.

Fees and charges of the types which will be established under Schedule 4, or were established under s.2(2) ECA and s.56 of the Finance Act 1973 require regular adjustment. These adjustments are not of a type for which the affirmative procedure would inherently be universally proportionate. As in the very common case of mechanistically accounting for the effect of inflation.

Schedule 5- Duties of the Queen's Printer to publish retained direct EU legislation

The direction-making power in Schedule 5 should be replaced by a requirement that any changes to the scope of the statutory duties of the Queen's Printer be made by regulations.

There was much discussion on this point in the Committee Stage debate on part 1 of Schedule 5. The Government is reflecting on the points made in relation to the power to direct the Queen's Printer. In the meantime, it is important to restate the reasons for the combination of duties and powers in this part of the Schedule.

Part 1 of Schedule 5 provides that the Queen's Printer has a duty to make arrangements for the publication of the types of EU instrument that may become retained direct EU legislation. Taken together, paragraphs 1 and 2 of Schedule 5 provide that the Queen's Printer must publish any relevant instruments in respect of which they have not received a direction.

The direction power in paragraph 2 is a carefully circumscribed administrative power. It does not allow a minister to determine or change what is or is not retained EU law, and nor is it designed to prevent some aspects of retained direct EU legislation from being published. It is included to help minimise the publication of instruments which will not become retained EU law, and so to help refine the task of the Queen's Printer. Any direction must be published, and so will be publicly available.

We do not consider that limited powers for a minister to give directions in relation to a public body are automatically inappropriate, though we of course appreciate the Committee's concern to ensure any such powers are necessary and proportionate. A recent example of how direction making powers can usefully operate is provided by section 92 of the Energy Act 2013, under which the Secretary of State may direct the Office for Nuclear Regulation (ONR) as to the exercise of its functions, generally or specifically. In 2017 the Secretary of State directed the ONR as to the supply of information in relation to the nuclear safety of civilian nuclear installations. This direction was published online.

Schedule 7- Regulations

The affirmative procedure should apply to regulations that transfer EU functions to a UK body under clauses 7 to 9, irrespective of whether or not the body is newly established.

Ministers have discretion to choose the procedure which will apply in many cases to SIs under the key powers in the Bill. This will include the transfer of non-legislative functions. We do not think that it is necessarily proportionate to require that all transfers of non-legislative functions, such as the power to publish documents or hire staff, should require the affirmative procedure. Where ministers think the negative procedure is appropriate these decisions will be in turn scrutinised by the sifting committee.

Whilst we cannot accept the recommendation, in line with our commitment to not taking unnecessarily broad powers, we intend to bring forward amendments to narrow the powers, by, amongst other things, making amendments to prevent clauses 7, 8 and 9 from being used to establish public authorities.

The affirmative procedure should apply to regulations under clauses 7, 8, 9 and 17 that amend or repeal primary legislation.

The Government notes the Committee's recommendations in relation to the scrutiny of the delegated powers, but if all statutory instruments amending primary legislation were affirmative, this would both be inappropriate to the content and require an undeliverable number of affirmative debates before exit day.

The Government believes that, in this instance, whether an SI is amending provisions in primary or secondary legislation is not a meaningful indication of the type of change that needs to be made or the significance of the change. To be ready for exit day a large number of fairly straightforward technical and textual changes will need to be made to primary legislation if we are to have a functioning

statute book on exit day. For example, the Equality Act 2010 refers in several places to "EU law" which will need to be replaced with the term "retained EU law". Also, some sections in this Act make reference to the European Parliament, an institution that will no longer be relevant to the UK once we leave the EU, and will therefore need to be repealed. Many changes will also be required to secondary legislation, particularly that which was made under section 2(2) of the ECA, and some of those changes will be just as - or more - significant as amendments which it will be appropriate to make to primary legislation. The powers therefore needs to be broad enough to allow for corrections to be made to both primary and secondary legislation.

There should be a sifting mechanism in both Houses for all regulations made under clauses 7, 8 and 9 where the Government currently have a choice of the negative or the affirmative procedure.

We agree with this recommendation. The Government accepted the amendments tabled on behalf of the Commons Procedure Committee by Charles Walker. As the Leader of the House of Lords set out at Second Reading and in Committee, it is our intention to table amendments to provide for a sifting process in the House of Lords via a sub-committee of the Secondary Legislation Scrutiny Committee.

A recommendation from a sifting committee of either House to upgrade the negative procedure to the affirmative procedure should be determinative save where the recommendation is rejected by a resolution of that House.

The Government expects that it will accept recommendations made by the committees and where it does not, to explain that decision to the committees and the House. However, the proposed powers of the (sub-)committees in the sifting process will not allow them to make a binding decision in relation to procedure. This is consistent with how this House's committees conduct their scrutiny work in other areas. The ultimate arbiter of whether the Government is using delegated powers appropriately must be Parliament itself.

When the House chooses to delegate a role to its committees it is important for the House to have confidence in the committee's expertise and judgment to make a persuasive recommendation.

Therefore, making the committee's recommendation binding and then building in an explicit provision to allow the House to reject such a decision, as the recommendation seeks to do, could risk undermining the well-established confidence that the House has in its committee structure.

We understand the concerns that as ministers are not bound to accept the committees' recommendations, the decision is still at their discretion. However, as set out above, our expectation is that recommendations of the sifting committees are likely to be accepted in most cases.

11 April 2014

APPENDIX 2: HAULAGE PERMITS AND TRAILER REGISTRATION BILL [HL]: GOVERNMENT RESPONSE

Letter from Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

Thank you for the Committee's 28 February report that examined the Haulage Permits and Trailer Registration Bill, and for the contributions from yourself and Lord Moynihan at Committee stage of the Bill. Following Committee stage and in advance of Report stage on 17 April, I am writing to respond to the recommendations set out in your report and provide you with information on a number of relevant amendments that the Government has now tabled which will address some of the points raised.

Scope of the Bill

The report states that we may not bring forward regulations under this Bill, so I would like to clarify the scope of the Bill. The UK's overall aim in the negotiations with the EU is to maintain the existing liberalised access for commercial haulage, but regardless of the outcome of the negotiations we expect to bring forward regulations under both parts of the Bill.

The first part of the Bill provides the powers to introduce a legal framework to regulate the allocation and enforcement of permits, where permits are required for the carriage of goods in, to, or through a country outside the UK. The use of a permit scheme for UK and EU hauliers will only be required if an international agreement sets this out.

I understand the concern about creating delegated powers if they were not going to be used at any point in the future in relation to EU exit, but this Bill has a wider application than just to our road haulage access with the EU; it will also apply to our bilateral agreements with non-EU countries. Non-EU agreements have previously been dealt with under administrative powers. This Bill is repealing the International Road Haulage Permits Act 1975 and bringing in a new framework. To ensure consistency in the administration, allocation and enforcement of permits, non-EU agreement permits will be dealt with under this new framework. This also means that a UK haulier can use one online system to apply and get permits for the EU as well as non-EU countries, reducing burden on hauliers.

The second part of the Bill, covering trailer registration, will also come into effect, as this is required as a consequence of ratifying the 1968 Vienna Convention. The Convention will be ratified regardless of our negotiations with the EU.

Additional Information and Illustrative Examples

The report acknowledges that while the Government position remains unclear due to the nature of our negotiations with the EU, Peers require more information regarding the delegated powers in the Bill. I wrote to all Peers in advance of Committee stage and provided overview documents and policy scoping documents with more details on the proposed regulations.

My Department will continue to consult with stakeholders in the coming months to discuss the regulations in more detail. The Government has tabled an amendment which will require the Secretary of State to consult such representative organisations as he thinks fit. This is consistent with the consultation provisions

in other transport legislation and will provide sufficient flexibility to consult those affected by the regulations being made.

Improving Scrutiny

Following the DPRRC report and Committee stage of the Bill, the Government has tabled amendments requiring regulations made under this Bill in relation to haulage permitting, trailer registration and offences in particular to be subject to affirmative procedure in the first instance. In line with the views expressed by the DPRRC and in the Committee stages of this Bill we agree that it is appropriate that the first regulations should be subject to further scrutiny. By applying this in the first instance we can ensure that Parliament has the opportunity to scrutinise the overall approach particularly regarding the powers used under clauses 1 and 2 which will set out the way in which the permitting system and allocation will work; under clause 12 which will set out the approach to trailer registration and under clause 17 on offences. If and when amendments are made to the regulations the framework will already be in place and as such any further changes are likely to be minor, the Government takes the view that the negative procedure provides an appropriate level of Parliamentary oversight.

Inserting Sunset Clauses

The report also made recommendations regarding the insertion of sunset provisions. I agree that the Bill should not provide powers that may never be used, but the use of the regulation making powers set out in the Bill does not depend on the outcome of negotiations with the EU and will be used in any event in relation to applications outside the EU context, for example in relation to applications pursuant to our bilateral agreements with non-EU countries. As the regulations will be used whatever the outcome of EU negotiations, a sunset provision would constrain our ability to manage permit applications for bilateral agreements with non-EU countries so we do not believe this is appropriate.

Other Government amendments

Following other debates at Committee stage the Government has also laid two other amendments to the Bill:

Reporting -Looking forward to the potential impacts of regulations made under the Act on the road haulage industry as a result of a permitting scheme, the Government has tabled an amendment which places an obligation on the Secretary of State to lay a report before Parliament. The obligation to report arises when regulations require permits, only a certain number are available, and those regulations apply to at least one EU Member State. The report must assess the effect on the UK haulage industry of any such restrictions. The obligation is to report after a year, if such restrictions apply at any time during the year, and there is a continuing obligation to report on succeeding years.

Permit Allocation -We do not yet know the details of our future relationship with the EU. As the approach will depend upon the negotiated outcome, it is important that we have the flexibility to allocate international haulage permits in a different ways. Random selection and first come first served are approaches that also support this flexibility. For example, the Bill allows random selection to be used in addition to, or in conjunction with, the criteria set out in regulations in order to decide which applicants to grant a permit. Random allocation could be used to assign a proportion of permits where similarities between applicants make it impossible for the criteria alone to distinguish between them fairly. It may also

be appropriate to allocate permits on a first come, first served basis, for example when there is little demand, so granting permits as operators apply for them would be a sensible and efficient method.

I hope that this letter is helpful and has sufficiently addressed the points set out in the Committee's report.

10 April 2018

APPENDIX 3: MEMBERS INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/. The Register may also be inspected in the Parliamentary Archives.