

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

28th Report of Session 2017–19

**Automated and Electric Vehicles
Bill: Government Amendments**

**Automated and Electric Vehicles
Bill: Government Response**

**Sanctions and Anti-Money
Laundering Bill [HL]:
Government Response**

Ordered to be printed 4 June 2018 and published 4 June 2018

Published by the Authority of the House of Lords

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:

[Baroness Andrews](#)

[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/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is hlddelegatedpowers@parliament.uk.

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.

Twenty Eighth Report

AUTOMATED AND ELECTRIC VEHICLES BILL: GOVERNMENT AMENDMENTS

1. We reported on this Bill in our 16th Report of this Session.¹ It has completed its Committee stage and is expected to have its Report stage on 5 June. The Government have tabled a number of amendments, some of which affect the delegated powers in the Bill. The Department for Transport has provided a supplementary Delegated Powers Memorandum.² There is one amendment which we wish to draw to the attention of the House.

Amendment 29—New clause imposing a duty to consider making regulations under clause 10 on request by an elected mayor

2. Clause 10 allows the Secretary of State to make regulations imposing requirements on large fuel retailers and service area operators about the provision on their premises of public charging points. Regulations under clause 10 are subject to the affirmative procedure on the first exercise of the powers. Subsequent regulations under clause 10 are subject to the negative procedure. Amendment 44 (if agreed to) will have the effect of also making regulations under clause 10 subject to the affirmative procedure where they amend the definitions of “large fuel retailer” or “service area operator” which terms are left wholly to be defined in regulations.
3. The new clause inserted by Amendment 29 will not affect the scope of the powers conferred by clause 10 or the level of Parliamentary scrutiny applied to that clause. Instead it imposes a duty on the Secretary of State to consider making regulations under clause 10 where the Mayor of London or of a combined authority has made a request and certain conditions are met (for example, publishing and consulting on proposals before making the request). Any regulations made in response to such a request will be specific to the area of the mayor who requested the regulations to be made. The Department explains that the purpose of the provision is to give the Mayor of London and mayors of combined authorities the ability to tailor the provision of charging points to the requirements of their local area³.
4. In our Report on the Bill, we recommended that *all* exercises of the powers conferred by clause 10 should be subject to the affirmative procedure.⁴ We were not convinced by the Government’s reasons for applying the affirmative procedure only to the first exercise of powers; namely, that any further exercise of the power is likely only to update the regulations, and that any amendments are likely to be minor and technical.⁵ It seemed to us that regulations under clause 10 were liable to change significantly over time, partly because of the untried and untested nature of the regulations and also because of the likelihood that circumstances affecting the regulations will develop significantly over time.

1 Delegated Powers and Regulatory Reform Committee (16 Report, Session 2017–19, [HL Paper 85](#))

2 Department for Transport, Automated and Electric Vehicles Bill [supplementary Delegated Powers Memorandum](#)

3 See para 10 of the [supplementary Delegated Powers Memorandum](#).

4 See para 9 of the [16th Report](#).

5 See para 37 of the [original] [Delegated Powers Memorandum](#).

5. The insertion of the new clause further undermines the Government's case that any subsequent exercises of the power is likely only to update the regulations and make minor and technical amendments. **Allowing mayors to request different regimes for their own areas, in our view, must imply that provision which will be made in such area specific regulations will be significantly different from that made in relation to the UK generally. Accordingly, we consider that the affirmative procedure should apply to all exercises of the power where regulations under clause 10 are made in response to a request under the new clause.**

AUTOMATED AND ELECTRIC VEHICLES BILL: GOVERNMENT RESPONSE

6. We considered this Bill in our 16th Report of this Session.⁶ The Government have now responded by way of a letter from Baroness Sugg, Transport Minister for Aviation, International and Security at the Department for Transport, printed at Appendix 1.

SANCTIONS AND ANTI-MONEY LAUNDERING BILL [HL]: GOVERNMENT RESPONSE

We considered the Commons Amendments to this Bill in our 26th Report of this Session.⁷ The Government have now responded by way of a letter from Lord Ahmad of Wimbledon, the Prime Minister's Special Representative for Preventing Sexual Violence in Conflict and the Minister of State for the Commonwealth and the UN at the Foreign and Commonwealth Office, printed at Appendix 2.

6 Delegated Powers and Regulatory Reform Committee (16 Report, Session 2017–19, [HL Paper 85](#))

7 Delegated Powers and Regulatory Reform Committee (26th Report, Session 2017–19, [HL Paper 140](#))

APPENDIX 1: AUTOMATED AND ELECTRIC VEHICLES BILL: GOVERNMENT RESPONSE

Letter from Baroness Sugg, Transport Minister for Aviation, International and Security at the Department for Transport, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

I am writing in response to the above report. I am grateful for the Committee's work in considering the Bill.

Part 2—Power to make regulations governing the installation and operation of charging points for electric vehicles

I welcome the Committee's recognition of the approach taken in this part of the Bill to consist entirely of regulation making powers, due to the developing market for charging infrastructure. In paragraph 5 of its report, the Committee made a number of recommendations where it considers the regulation making power goes too far, and this letter provides a fuller explanation on the justification of these powers.

The Committee suggested that 'operator' should be defined on the face of the Bill. Our justification for not defining 'operator' in this way is that the market is developing quickly and we anticipate commercial entities captured by the definition to change frequently during the early formative stages prior to any decision to make regulations. 'Operator' is a central term that will fix the majority of obligations in Part 2, so it vital that the definition is right. My Department has already given an indication of what this term is likely to constitute through the Delegated Powers Memorandum, which signals to the market what this term is likely to capture. Consultation will take place and this term will be defined through regulations. These regulations will be made through the affirmative procedure giving Parliament the opportunity to debate the term.

The Committee recommended that the Bill also contain more detail about who is covered by the terms 'large fuel retailers' and 'motorway service areas'. The key reason why these terms are not defined in the Bill is that industry engagement is required to assist in ensuring the term does not have unintended consequences for certain retailers (for example, for those who are too small, or those service areas in close proximity to, but not on, motorways). This can only properly be done by means of a consultation on regulations. Therefore, we believe it is too early to meaningfully define what is meant by these terms, but in recognition of this concern we have amended the level of Parliamentary scrutiny they will receive.

I agree with the Committee's recommendation to make it clear on the face of the Bill that there is no intention to impose requirements about ensuring the ongoing transmission of charge point data on domestic consumers. I have brought forward a Government Amendment at Report Stage to provide this clarification.

Parliamentary scrutiny of regulations under Part 2

Provisions subject to the negative procedure

The Committee notes that there are two provisions in Part 2, clauses 9(3) and 13, that are subject to the negative procedure, which the House might want to seek further clarification on what 'other matters' might be, beyond technical specifications. This was discussed and clarified at Committee Stage. Regulations

under these clauses (9(3) and 13) relate to the connecting components or prescribed requirements for a smart chargepoints. Anything to be included in the regulations that is outside of a technical specification must relate to the component itself and is therefore very likely to be similarly technical in nature.

Provisions subject to first-time affirmative procedure

The Committee raised concern about the use of the affirmative first procedure for some powers which they consider to be wide in scope. First, concern is raised over the affirmative-first procedure for defining the term ‘operator’. In practice, that is when the details of the definition are likely to be specified, and Parliament would be provided with assurance that the use of the term is appropriate in relation to the policy intent, the market and those affected. Once a decision has been taken to make regulations and the definition has been consulted on and debated in Parliament, any subsequent amendments are more likely to be smaller changes to the definition. If it was to be the case that changes did happen to be larger, there is an obligation on the Secretary of State to consult about any regulations made under Part 2 of the Bill under clause 16.

Secondly, the Committee raised concern about the use of affirmative first in relation to all exercises of power conferred by Clause 10. The Committee notes that the provision is ‘untested and untried’. Parliament will be able to fully consider the first regulations and satisfy itself that the obligations are suitable and proportionate. Any change made will have been subject to consultation beforehand under Clause 16 of the Bill, with the impacts of planned measures tested with industry and stakeholders. If affirmative in all instances was required, I am concerned that there may be circumstances where we need to act quickly to avoid unintended consequences, for example by providing a fresh exception or where the market has changed suddenly and obligations need to be recast in light of that. However, I do agree that it will be important that, as these regulations will place requirements on ‘large fuel retailers’ and ‘service area operators’, Government goes through a thorough process to define these entities. Therefore, I have tabled an amendment at Report Stage which would require each time the definitions of either ‘large fuel retailer or ‘service area operator’ is amended, the affirmative procedure will be used.

Finally, the Committee recommended that the affirmative procedure should apply in respect of all exercises of the powers conferred by Clause 14. Parliament will have an opportunity to consider and approve the proposals brought forward for an enforcement regime. Such a regime will likely include powers for the regulator to determine if a breach has taken place, the civil penalty regime and appeals process. Any such regime would only be implemented after Parliament has approved it. Thereafter, the powers and appellate aspects of the regime are unlikely to need substantial amending. The only likely change will be to the level of civil penalties to ensure they remain dissuasive. It would be normal for such amendments to be conducted under the negative procedure. One example from the transport sector can be found in the Traffic Management Act (2004), part 3 of which deals with the payment of fees in connection with obtaining permits for carrying out street works.

Finally, I should add that I will also be tabling Government amendments on reporting requirements in order to improve the effectiveness of this legislation, and I hope this provides the Committee with further assurance.

Again, I would like to thank the Committee for its work in considering the Bill and I hope the explanation I have provided proves helpful.

29 May 2018

APPENDIX 2: SANCTIONS AND ANTI-MONEY LAUNDERING BILL [HL]: GOVERNMENT RESPONSE

Letter from Lord Ahmad of Wimbledon, the Prime Minister's Special Representative for Preventing Sexual Violence in Conflict and the Minister of State for the Commonwealth and the UN at the Foreign and Commonwealth Office, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

I write to thank the Committee for its consideration of the Commons Amendments to the Sanctions and Anti-Money Laundering Bill, which concluded its passage through Parliament on 21 May 2018.

The FCO has carefully considered the recommendations on Commons Amendments 11 and 12, and I am forwarding the response to the Committee today.

I would also like to thank the Committee for the interest it has taken in the Bill during its passage through Parliament.

Further note for the Delegated Powers and Regulatory Reform Committee

Introduction

1. This note responds to the Delegated Powers and Regulatory Reform Committee's 26th Report of Session 2017–19. The Committee commented in particular on Commons Amendments 11 and 12 to the Sanctions and Anti-Money Laundering Bill. The Bill received Royal Assent on 23 May 2018, but I indicated, at Lords Consideration of Commons Amendments, that I would respond to the Committee in writing.

Regulations-based approach

2. In paragraphs 8 and 10 of the Committee's report it is noted that in other legislation similar powers to those provided for in Amendments 11 and 12 have been set out on the face of the primary legislation rather than being left to regulations.
3. The difference reflects that in this case the primary legislation provides for a regulations-based approach to the subject matter of the Act: the Act sets out the detailed framework that will be applied through sanctions regulations. For the sake of clarity and accessibility, we intend to have one regulation per sanctions regime (e.g. DPRK, Iran). This approach is also considered to be appropriate in relation to these maritime enforcement powers, partly in light of the fact that almost all of the detail around these powers is set out on the face of the Act: the nature of the powers that may be exercised, the circumstances which must exist before these powers may be exercised and the nature of the procedure that is to be followed when goods have been seized under these powers. Ministers have very little discretion about what can be set out in the regulations in relation to these powers.
4. There are also safeguards applicable to the exercise of these powers, which are set out on the face of the Bill. For example, these powers may not be exercised in relation to foreign ships or British ships in foreign waters without the Secretary of State's authority.

Extent of the powers

5. The Committee has also queried, in paragraphs 8 and 10 of their report, why the wording used in the clauses appears to provide that the list of powers is non-exhaustive.
6. It is worth noting that the approach to the wording here reflects the approach taken in relation to the main enforcement power in the Bill (now in section 17), which also uses the word “includes”. However, it is important to note that each of the powers contained within Amendments 11 and 12, and in particular those in subsection (4) of what is now section 19 (and the equivalent in section 20), were carefully considered before their inclusion. Those powers are considered necessary to properly enforce trade sanctions outside of the UK. As I mentioned in Parliament, if the intention was to have additional powers to take any other coercive action of the sort provided for in these clauses, one would expect the primary legislation to set out those additional powers, and it does not do so.

Prescribed persons

7. The Committee has also queried, including in paragraphs 8, 10 and 15 of their report, why a detailed list of persons who will be able to exercise these powers is not set out on the face of the Bill.
8. It should be noted that this is not inconsistent with the approach taken in respect of the analogous powers contained in existing legislation: see, for example, section 84(3)(g) of the Policing and Crime Act 2017, which provides for secondary legislation to set out additional persons by whom the powers may be exercised. Although the intention is that regulations will prescribe only the UK authorities listed in other legislation (in particular, commissioned officers of HM ships, constables, NCA officers and customs officials), as with other similar legislation, we think it is sensible to have power to amend this list, including in case of organisational restructuring. For an example of a power being used to amend such a list see Article 2 of the Criminal Justice (International Co-operation) Act 1990 (Enforcement Officers) Order 1992, made under paragraph 1(1)(c) of Schedule 3 to the Criminal Justice (International Co-operation) Act 1990.

23 May 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.