



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

30th Report of Session 2017–19

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

**Domestic Gas and
Electricity (Tariff Cap) Bill:
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:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Lord Flight](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

[Lord Rowlands](#)

[Lord Thomas of Gresford](#)

[Lord Thurlow](#)

[Lord Tyler](#)

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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 hldelgatedpowers@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.

Thirtieth Report

AUTOMATED AND ELECTRIC VEHICLES BILL: GOVERNMENT RESPONSE

1. We considered the Government Amendments to this Bill in our 28th Report of this Session.¹ 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.

DOMESTIC GAS AND ELECTRICITY(TARIFF CAP) BILL: GOVERNMENT RESPONSE

2. We considered this Bill in our 27th Report of this Session.² The Government have now responded by way of a letter from the Rt Hon. Lord Henley, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, printed at Appendix 2.

1 Delegated Powers and Regulatory Reform Committee (28th Report, Session 2017–19, [HL Paper 147](#))

2 Delegated Powers and Regulatory Reform Committee (27th Report, Session 2017–19, [HL Paper 141](#))

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

Automated and Electric Vehicles Bill - Government Amendments: Delegated Powers and Regulatory Reform Committee Report

I am writing in response to the above report. Again, I am grateful for the Committee's work in relation to the Bill, this time in considering the Government Amendments put forward at Report Stage.

The Committee made a recommendation that the affirmative procedure should apply to all exercises of the power where regulations under current Clause 11 are made in response to a request under the new clause. I acknowledge the arguments and concerns raised by the Committee, however I believe that these concerns can be addressed through a number of procedural safeguards.

Firstly, I wish to explain in more detail a statement I made during Report Stage of the Bill. Under Clause 18(4), the first regulations made under Clause 11 (Large Fuel Retailers etc) would be subject to the affirmative procedure. This means that the first use of the enabling powers in clauses 11 (1) and 11 (3) would be debated by Parliament. It is our intention that any regulations made under Clause 11 (1), at the request of an elected Mayor, would, given their restricted application, be made under the negative procedure. It is the intention that such regulations would not be the first use of the power in 11 (1), and therefore UK provision would already have been provided for in regulations under that power.

As you know, following consideration of your previous report on this Bill, I made a number of amendments at Report Stage to ensure that the definition of a 'large fuel retailer' and 'service area operator' is always made through the affirmative procedure. This will ensure there is always parliamentary scrutiny over who the obligations fall upon.

I am also tabling an amendment at Third Reading to make it clear that elected Mayors may only request the Secretary of State to make regulations in respect of large fuel retailers, as defined in regulations.

I would also like to highlight that regulations made under Clause 12 would have been subject to two periods of consultation -the elected Mayor would be required to undertake local consultation before asking the Secretary of State to make regulations, and under Clause 18(3) the Secretary of State would also be required to undertake consultation before making the regulations.

I would also note that the Secretary of State would be required to consider whether to make regulations, rather than simply being required to make regulations, following a request under Clause 12. This consideration process therefore provides an additional procedural safeguard.

I also believe that the negative procedure would be more appropriate than the affirmative procedure for exercises of this power. This is because such regulations would likely only be applicable to a given Mayoral area where their impacts had already been fully consulted on twice and considered by the Secretary of State.

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

13 June 2018

APPENDIX 2: DOMESTIC GAS AND ELECTRICITY (TARIFF CAP) BILL: GOVERNMENT RESPONSE

Letter from the Rt Hon. Lord Henley, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, to the Rt Hon. Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee

The Government is grateful for the report from the Delegated Powers and Regulatory Reform Committee on the Domestic Gas & Electricity (Tariff Cap) Bill. The Committee will be aware that the Bill enacts a manifesto commitment to cap domestic retail energy prices.

The Government notes that the Committee made two recommendations

- (1) That the drafting of Clause 9 (Consequential modification of standard supply licence conditions) and the powers explained in the Clause be explained by the Minister in the House, and
- (2) That the power of the Secretary of State to remove the cap before 2023 should only be exercisable by laying an affirmative statutory instrument for examination in Parliament in order to give scrutiny to the decision to remove.

Explanation of Clause 9.

During the Committee stage of the passage through the Lords, Lord Grantchester moved a probing amendment on this matter to give the Government an opportunity to address the concern. The amendment was not moved, after I responded to it as follows:

“Finally, I turn to Amendment 37, which is a probing amendment seeking to understand the purpose of Clause 9. Clause I empowers Ofgem to modify the standard supply licence conditions following the removal or cessation of the tariff cap as specified under Clause 8. The clause allows Ofgem to modify the standard supply licence conditions as it considers necessary or expedient, but with the requirement that Ofgem publish the modifications to alert all stakeholders as to the impact of the modifications. The publication of the Secretary of State’s decision will alert stakeholders to the cap coming to an end. This provision would enable the licence conditions to be tidied up to reflect the cap being lifted. Otherwise, they would remain in the licence but would be redundant.”

Clause 7 - Review of Competition for Domestic Supply Contracts; Clause I - Extension and termination of tariff cap conditions.

The Government’s policy intention that this is a temporary intervention with a cap that lasts until 2020. But where the Secretary of State considers that the conditions for effective competition are not yet in place, the cap can be extended. It is not the Government’s intention that the cap will necessarily last to the end of 2023. This will depend on whether or not the conditions for effective competition are in place.

Clause 7 of the Bill requires Ofgem to review the conditions for effective competition in the market in 2020, and to produce and publish a report. Ofgem

must also make a recommendation as to whether they consider the cap should be lifted at this point, or be extended for a further year. The Secretary of State will then make a statement as to whether he considers that the conditions for effective competition are in place. Clause I provides that where the statement is to the effect that they are not, the price cap will have effect for a further year. The Bill enables this process to happen each year, but that the price cap cannot have effect beyond the end of 2023. Thus, the trigger for extension of the cap each time is a statement made by the Secretary of State (in light of the report and recommendation from Ofgem), that conditions for effective competition are not in place. This is a matter for the Secretary of State's objective judgement, having regard to all relevant matters including the Ofgem report - and would of course be challengeable in the courts.

The Committee's report states that the significance of a decision to bring the cap to an end before 2023 is such that it should be subject to Parliamentary scrutiny with the affirmative procedure applying. This recommendation would have the effect of changing the policy position such that the cap becomes effective until 2023, unless the Secretary of State decides, and Parliament consents, to it being removed before then. This is not consistent with the Government's policy that the cap will cease to have effect in 2020, unless extended for one year at a time up to the end of 2023, on each occasion based on an objective assessment of whether the conditions for effective competition are in place. This is an important point of policy for the Government.

As regards making a statutory instrument to give effect to a decision of the Secretary of State, I should point out that the BEIS Select Committee scrutinised the Bill in draft and agreed that the decision should be for the Secretary of State. The Government also notes that there may be unintended consequences of adding a procedure for a statutory instrument. The Bill requires Ofgem to review whether the conditions for effective competition are in place by 31st August. The Secretary of State has to publish his statement before 31st October, so that if the decision is for the cap to cease, suppliers have the industry standard 56-day standstill period in which to adjust their procedures and systems and to communicate with their customers, if necessary.

The period 31 August to 31 October does not include a great deal of parliamentary time, given summer and conference recesses. In order for a statutory instrument to be laid and debated in both Houses by the end of October it would probably be necessary to bring forward Ofgem's review of the market to before July. But if Ofgem's review had to be completed by the middle of the year, it would mean that the decision on whether the cap was to remain for the following year was being informed by a report that was carried out around 6-9 months before the year in which the decision was to have effect.

If the Secretary of State objectively decides that the conditions for competition are in place, but Parliament disagrees, there would be considerable uncertainty as to the legal consequences. For these reasons the Government is not able to accept this recommendation.

Nonetheless, the Government notes that Parliament may call upon the Secretary of State to explain his decision on extending or removing the cap at any time. If called there could be the opportunity for Parliament to scrutinise his decision in a debate.

22 June 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.