

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

5th Report of Session 2017–19

Telecommunications Infrastructure (Relief from Non- Domestic Rates) Bill

Ordered to be printed 18 October 2017 and published 19 October 2017

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 are:

Lord Blencathra (Chairman)	Lord Moynihan
Baroness Dean of Thornton-le-Fylde	Lord Rowlands
Lord Flight	Lord Thomas of Gresford
Lord Jones	Lord Thurlow
Lord Lisvane	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.

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.

Fifth Report

TELECOMMUNICATIONS INFRASTRUCTURE (RELIEF FROM NON-DOMESTIC RATES) BILL

1. The Bill, which had its Second Reading on 9 October, gives effect to the announcement in the Government's Autumn Statement 2016 to provide non-domestic rates relief for new full-fibre infrastructure for a period of five years from 1 April 2017 (referred to below as "the telecoms relief"). The relief is intended to support rollout of new full-fibre broadband infrastructure and future 5G communications to homes and businesses.
2. The Bill makes provision for the telecoms relief by amending Part 3 of the Local Government Finance Act 1988 ("the 1988 Act"). The amendments made by the Bill are primarily concerned with setting up the legislative framework for the new relief. The detailed provisions governing the relief will be contained in regulations made under the amended provisions. The Department for Communities and Local Government has provided the Committee with a memorandum explaining the delegated powers conferred by the Bill.¹

Clauses 1 to 3—Power to make regulations in relation to relief for telecommunications infrastructure

3. Clauses 1 to 3 amend provisions of Part 3 of the 1988 Act concerned with determining liability to non-domestic rates. The overall effect of the amendments is to confer a wide discretion on the appropriate national authority² to determine in regulations the amount of the telecoms relief and how it is to be calculated, and also to determine the circumstances in which the relief will apply. The only limit specified on the face of the Bill is that the property concerned must be wholly or mainly used for the purpose of facilitating the transmission of electronic communications. Despite being described in the Explanatory Notes to the Bill as a Bill for providing "a new 100% business rates relief for the installation of new optical fibre for the next five years", there is nothing on the face of the Bill which explicitly provides for the telecoms relief to be set at 100% or which requires the relief to be limited to new full-fibre infrastructure. Nor indeed is there anything which limits the relief to a period of five years.
4. The Department's reasons for these delegated powers are given in paragraphs 8 to 12 of the memorandum. The Department refers to the fact that the telecoms relief involves new concepts in rating legislation and the wide powers will allow flexibility to develop the necessary provisions in consultation with the telecoms industry, their ratings advisers and the Valuation Office Agency. The memorandum also makes the point that regulations will allow flexibility to adapt the definition of full-fibre in the light of continuing technical advances and changes in industry practice.

1 Department for Communities and Local Government, *Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill: Delegated Powers Memorandum*: <https://publications.parliament.uk/pa/bills/ibill/2017-2019/0065/18065-DPM.pdf>

2 The Bill applies to both England and Wales. The regulation making powers are conferred on the appropriate national authority, which in relation to England is the Secretary of State and in relation to Wales is the Welsh Ministers.

5. We accept that broad powers are justified given the technical complexity and novelty of defining full-fibre infrastructure in legislation and the likely complexity of the provisions required to determine the amount of the relief in relation to a mixed use property whose use includes, but is not limited to, full-fibre infrastructure. We also note that the approach adopted here is consistent with that adopted in earlier legislation for small business rates relief.
6. **However, we consider that questions remain unanswered:**
- **Why is it not appropriate to put the principle of 100% rates relief on the face of the Bill? As it stands, the regulations could provide for a lower level of relief even where the property is solely used for full-fibre infrastructure.**
 - **Why does the legislation not expressly limit the period for which the relief is payable to five years? Under the Bill, the provisions for the telecoms relief will last indefinitely. No reasons are given, either in the Explanatory Notes or in the delegated powers memorandum, explaining why this is so despite the stated policy intention that the relief should apply for a period of five years.**

The House may wish to invite the Minister to provide a full explanation in response to these questions.

Clause 4—Power to make consequential provision

7. Clause 4(2) confers a power on the appropriate national authority by regulations to make provision that is consequential on any provision of the Bill. By virtue of clause 4(4), this power may be exercised by amending or repealing primary legislation. It is, therefore, a Henry VIII power. Where regulations under clause 4(2) amend or repeal primary legislation they are subject to the affirmative procedure. In all other cases, they are subject to the negative procedure.
8. The reason for including this delegated power is given in paragraph 17 of the memorandum:

“While the Bill itself contains as many consequential amendments as possible (see the Schedule to the Bill), it is possible that there are further consequential amendments that need to be made. As such it is considered prudent for the Bill to contain a power to deal with these in secondary legislation.”

This reason echoes those given in the past for including similar powers in previous Bills. We note, for example, the European Union (Withdrawal) Bill where almost identical reasons are given for including a power to make consequential provision in clause 17(1) of that Bill.

9. In our view, it is understandable with a large Bill dealing with a wide range of matters, or a complex Bill such as the European Union (Withdrawal) Bill, that it may be difficult to identify in advance all necessary consequential changes to other legislation. However, we find it difficult to accept that argument in the case of a narrowly focused, single topic Bill—particularly in respect of those consequential changes which require the amendment of primary legislation. Furthermore, nothing is said in the memorandum to persuade us otherwise.

10. **A power to make consequential provision inherently lacks a clear definition to its scope and therefore potentially confers wide powers, particularly where it includes a power to amend primary legislation. It follows, in our view, that such powers should not be conferred as a matter of routine, but only where there is a compelling justification. For the reasons given in paragraph 9, we are not convinced that the Department's explanation is sufficient to meet this threshold. Accordingly, in the absence of a fuller and more convincing explanation, we consider the power conferred by clause 4(2) to be inappropriate in so far as it includes a power to amend primary legislation.**

APPENDIX 1: MEMBERS AND DECLARATIONS OF 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.

For the business taken at the meeting on 18 October 2017 Members declared no interests.

Attendance

The meeting on the 18 October 2017 was attended by Lord Blencathra, Baroness Dean of Thornton-le-Fylde, Lord Flight, Lord Jones, Lord Moynihan, Lord Rowlands, Lord Thomas of Gresford and Lord Tyler.