

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

8th Report of Session 2017–19

**Telecommunications
Infrastructure (Relief from
Non-Domestic Rates) 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 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

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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

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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.

Eighth Report

TELECOMMUNICATIONS INFRASTRUCTURE (RELIEF FROM NON-DOMESTIC RATES) BILL: GOVERNMENT RESPONSE

1. We considered this Bill in our 5th Report of this Session.¹ The Government have now responded by way of a letter from Lord Bourne of Aberystwyth, Minister for Faith and Parliamentary Under Secretary of State at the Department for Communities and Local Government, printed at Appendix 1.

¹ Delegated Powers and Regulatory Reform Committee, (5th Report, Session 2017–19, [HL Paper 26](#))

APPENDIX 1: TELECOMMUNICATIONS INFRASTRUCTURE (RELIEF FROM NON-DOMESTIC RATES) BILL: GOVERNMENT RESPONSE

Letter from Lord Bourne of Aberystwyth, Minister for Faith and Parliamentary Under Secretary of State at the Department for Communities and Local Government, to 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.

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

I welcome the Committee's recognition in paragraph 5 of their Report that due to the complexity and novelty of defining fibre, the broad powers in clauses 1 to 3 of the Bill are justified. In paragraph 6 of the Report the Committee questioned why the principle of 100% rate relief does not appear on the face of the Bill. The Committee also questioned why the Bill does not expressly limit the relief to 5 years. I am happy to provide a further explanation on these points.

Firstly in relation to the level of the relief, the relief is only available on new fibre which will comprise only part of the rates bill for telecom operators. So the percentage level of the relief needs to be set so as to reflect the percentage of new fibre on each network. That will of course vary network to network and may change over time. If we provided on the face of the Bill for 100% relief for telecommunication hereditaments we would, therefore, be providing too much relief.

So instead we intend to use the powers in the Bill to set out a scheme under which the Valuation Officer will, when necessary, certify how much of the rateable value for each network is attributable to new fibre. This in turn will allow us to set the percentage relief at the correct level for each network. The powers in clauses 1 to 3 and the draft regulations published by my Department will allow us to achieve that.

Secondly in relation to the period of the relief, we have made clear in the draft regulations that the relief will apply up to 2022. But as with all taxes we will of course keep the success of this scheme under review and especially as we approach 2022. The Bill as drafted will, therefore, allow the Chancellor, as 2022 approaches, to consider in a timely manner if the Government wishes to repeat the scheme for future years.

Clause 4: Powers to make consequential provision

In paragraph 10 of the Report the Committee have said that, in the absence of a fuller and more convincing explanation, they consider the consequential power in clause 4 of the Bill to be inappropriate in so far as it includes a power to amend primary legislation. I hope I can provide a fuller explanation to explain the justification for this power.

Clause 4 contains a power to make consequential provision, including a power to amend or repeal primary legislation. Such a power is included in this Bill as a precaution so that the Government can ensure that the Bill's provisions, when enacted, are workable in the context of other legislation. Whilst the Bill itself

is narrow and includes in the Schedule the consequential changes to primary legislation, for which the Government has made every effort to identify as many as possible, the risk of needing to make further consequential changes cannot be eliminated. It is, therefore, a prudent measure which will ensure that if there are further consequential amendments we are able to deal with them through secondary legislation.

The Government notes the Committee's concerns that clause 4 of the Bill confers wide powers, particularly where it includes a power to amend primary legislation. However, any provision made under this power is narrowed by the requirement that it must be consequential on provisions in the Bill. This is a strict test which means anything we do under these powers must be absolutely necessary or clearly desirable to ensure the Bill works as intended.

Furthermore, regulations made under the power will be subject to the scrutiny by the Joint Committee on Statutory Instruments who will be interested in the power being used according to the strict 'consequential' test. Regulations made under clause 4 which amend or repeal any provision of primary legislation will be subject to the affirmative procedure.

11 November 2017

APPENDIX 2: 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.