HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

15th Report of Session 2017–19

Haulage Permits and Trailer Registration Bill [HL]

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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)
Baroness Dean of Thornton-le-Fylde
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.

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 hldelegatedpowers@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.

Fifteenth Report

HAULAGE PERMITS AND TRAILER REGISTRATION BILL [HL]

1. This Brexit-related Bill received its Second Reading on 27 February 2018. Its purpose is to support UK road hauliers in continuing to operate internationally after the United Kingdom leaves the EU.

2. The Bill is wholly skeletal, more of a mission statement than legislation.

   - Clauses 1 to 5 all begin: "Regulations may …".

   - 16 of the 24 clauses contain delegated powers, all of them subject only to the negative procedure.[1]

3. It would have helped us had the Department for Transport, in addition to providing a delegated powers memorandum,[2] produced some illustrative regulations alongside the Bill. As it is, we are in the dark because the devil will be in the regulatory detail.

4. We appreciate that the position remains unclear for a variety of reasons. **Nonetheless, the Minister may wish to assist the House in its consideration of the Bill at Committee Stage by providing illustrative examples (however tentative and qualified) of at least some of the regulations to be made under the main delegated powers in the Bill**.

5. Meanwhile we draw attention to clauses 1 to 3 of the Bill.

Clause 1: international road transport permits

6. The delegated powers memorandum explains that an agreement with the EU following the United Kingdom's exit may require UK road hauliers to carry permits enabling them to transport goods to, in or through the EU. Clause 1 allows the Secretary of State by regulations to prohibit the use of a UK-registered road vehicle on international journeys without a permit and without all the conditions of the permit being complied with.

7. The Department gives no indication as to what regulations made under clause 1 might include, on the ground that "the terms of international road transport agreements are as yet unknown". We are told that the provisions put in place under the regulations "*if any provisions are needed at all*" will reflect the terms of the international agreements. Yet the Department proposes to use the negative procedure in all cases.

8. **Given that regulations under clause 1 might prove to be unnecessary, we recommend that the Bill should contain a sunset provision, extendable if necessary, to remove the regulation-making power in clause 1 if it does in fact prove to be unnecessary.**[3]

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1 Save for the commencement provision in clause 23, which is subject to no parliamentary procedure at all.

2 Department for Transport, Haulage Permits and Trailer Registration Bill [HL] Delegated Powers Memorandum

3 Clauses 7(8), 8(4) and 9(4) of the European Union (Withdrawal) Bill all contain sunset provision.

9. **We also recommend that there should be a sifting procedure for regulations under clause 1 - akin to the one we recommended for the European Union (Withdrawal) Bill[4] - allowing a scrutiny committee to recommend an uprating of the negative procedure to the affirmative procedure.** We do so because—

   (a) the content of any regulations made under clause 1 will depend on future international agreements;

   (b) there is no current indication as to what regulations under clause 1 might say or how important they might be, if they are needed at all;

   (c) it cannot be known in advance that the negative procedure will always be suitable for regulations made under clause 1;

   (d) it might transpire that some regulations made under clause 1 might require the affirmative procedure.

10. We are not seeking to make a sifting mechanism a general feature of our legislative landscape. However, the circumstances of the United Kingdom's exit from the European Union have given rise to unique legislative challenges, not least because the withdrawal agreement is being negotiated in tandem with the passage of several significant pieces of primary legislation, including the present Bill. Given the skeletal nature of this Bill and the absence of illustrative regulations, a sifting mechanism commends itself as a proportionate and sensible response to the present uncertainty. We would envisage the sifting function being undertaken by the same committees charged with sifting proposed negative instruments laid under the European Union (Withdrawal) Bill.

Clause 2: number and allocation of permits

11. Clause 2 enables the Secretary of State, by regulations, to make provision with regard to the following:

   - how decisions are to be made whether to grant permits,
   - for the number of permits available in relation to a country to be determined in accordance with an international agreement,
   - setting the criteria for the grant of a permit,
   - specifying the method the Secretary of State will use to decide which applications to grant where there are a limited number of permits available and the criteria are insufficient for the purpose of making that decision.

12. The delegated powers memorandum says:

> "Until the arrangements regarding the continued access of goods vehicles to Member States are clear, provisions need to be made that cater for all options from the allocation of a small number of permits on the basis of strict criteria to the allocation of a large number of permits on a first come, first served basis.

4 At paragraph 58 of our 12th Report, Session 2017–19 (HL Paper 73), we said: "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."

> How the precise procedures will operate and which criteria will apply … may vary depending on the terms of the international road transport agreements concluded with the EU and other countries.
>
> … it is not yet clear what sort of a regime or regimes will need to be introduced and, in the interest of ensuring that the provisions cater for agreed scenarios and are not too wide, it is necessary to legislate by way of secondary legislation once negotiations have been concluded and the nature of any permit scheme that needs to be introduced is clear."

13. Although the Government do not currently know what regulations under clause 2 will contain or how significant they will be, the Government propose that the negative procedure will always apply to such regulations. **For the reasons given at paragraph 9 above, we recommend that there should be a sifting procedure for regulations under clause 2 allowing a scrutiny committee to recommend an uprating of the negative procedure to the affirmative procedure.**

Clause 3: temporary exemptions

14. Clause 3 enables regulations to allow the Secretary of State to grant a temporary exemption from the prohibition imposed on operators of goods vehicles registered in the UK—by regulations made under clause 1(1)—in order for an emergency or some other special need to be dealt with. The delegated powers memorandum explains that exemptions would be required as a matter of urgency and are likely to be technical. The memorandum also says that regulations under clause 3 might not be needed at all.

15. **Given that regulations under clause 3 might not be needed, we recommend that the Bill should contain a sunset provision, extendable if necessary, to remove the regulation-making power in clause 3 if it does in fact prove to be unnecessary.**

APPENDIX 1: MEMBERS AND DECLARATIONS OF 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.

For the business taken at the meeting on 28 February 2018 Members declared no interests.

Attendance

The meeting on the 28 February 2018 was attended by Lord Blencathra, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler.