



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

16th Report of Session 2017–19

Automated and Electric Vehicles Bill

Finance (No.2) Bill

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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](#)

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.

Sixteenth Report

AUTOMATED AND ELECTRIC VEHICLES BILL

1. The Bill, which had its Second Reading on 20 February, is concerned with two matters relating to developing vehicle technology:
 - It provides for the creation of a new liability scheme for insurers in relation to automated vehicles.
 - It allows for the creation of regulations governing the installation and operation of charging points for electric vehicles.
2. The Department for Transport has provided a delegated powers memorandum.¹

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

3. Part 2 of the Bill consists entirely of regulation-making powers. It is therefore, in effect, a skeleton part of a bill (meaning that the real operation of the Part would be entirely by the regulations). This Committee has made it clear in the past² that, in these circumstances, we expect a full justification for the decision to adopt that structure of powers.
4. We consider that, on this occasion, the Department has provided convincing reasons for Part 2 of the Bill to consist solely of enabling powers. According to the Department, because of the relative newness of electric vehicle charging technology, the factors affecting the installation and operation of charging points are at an early stage of development, and the market for supporting the charging infrastructure is also developing. Accordingly it is not yet clear what areas of regulation covered by the Bill may be required or (if required) what the nature of the regulation should be. The Government therefore need to take the powers in order to be able to intervene quickly to address market failures if they become a problem. It also seems clear that there will be a need to make significant changes to the regulations as the market, technology and other circumstances relating to charging points develops over time. (Given this, when we consider the use of the first-time affirmative procedure in paragraphs 7 to 9 below, we challenge the Department's claim that any subsequent exercises of the powers will only "update" regulations and make minor and technical changes.)
5. There are, however, a number of respects in which we consider that the regulation-making powers in Part 2 go too far:
 - As acknowledged by the Department, many of the powers in Part 2 will have the effect of imposing obligations on the "operators" of public charging points. The meaning of "operator" for these purposes is left wholly to be defined in regulations, with nothing on the face of the Bill to indicate who falls within the scope of the definition. The Department argues³ that it would be inappropriate to fix the definition

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

2 See paragraph 36 of the Committee's most recent [Guidance for Departments](#) issued in July 2014.

3 See paragraph 18 of the delegated powers memorandum.

of operator in primary legislation because the developing nature of the market may require the definition to change over time. However, that does not explain why it is not possible to set out on the face of the Bill who is to be regarded as an operator as things currently stand. The Department explains⁴ that an operator is intended to cover a person who owns a public charging point or operates it on behalf of another person. It seems to us that it would provide greater certainty and clarity if a definition along these lines were included in the Bill, accompanied by a power to modify that definition to take account of future changes. **Accordingly, we recommend that the Bill should specify on its face who is covered by the term “operator” of a public charging point, with the regulation-making power limited to modifying the definition to take account of future changes.**

- Clause 10 will allow regulations to impose significant obligations on “large fuel retailers” and “service area operators” about providing public charging points on their premises. Clause 10 gives no indication as to who is a large fuel retailer or service area operator for these purposes. There is nothing on the face of the Bill to limit the meaning of the terms, instead they are to be defined in regulations. The terms themselves do not provide any clear limits on how they will be defined. No reasons are given by the Department to explain the decision to leave the terms wholly to be defined in regulations. The Department simply states in the memorandum⁵ that “what constitutes a “large fuel retailer” or “service area operator” is a level of detail that is more appropriately set out in regulations”. **We recommend that, in the absence of convincing reasons to the contrary, the Bill should contain more detail about who is to be covered by the terms “large fuel operator” and “service area operator” given the significant requirements which may be imposed on them by regulations under clause 10.**
- Clause 12 allows regulations to impose requirements about ensuring the ongoing transmission of charge point data to persons prescribed in the regulations. The intention is to use this power to ensure data flow from smart charge points to an electricity distribution network operator or the National Grid. Clause 14 will allow civil penalties to be imposed for breaches of regulations under clause 12, without the Bill setting any limit on the maximum amount of the penalty which may be imposed.

Regulations under clause 12 are capable of applying to domestic charge points as well as to charge points made available to members of the public. The Department states in its memorandum⁶ that there is no intention to use the powers to impose requirements on domestic consumers. However, this restriction has not been incorporated into the Bill itself which allows regulations under clause 12 to impose requirements on “prescribed persons or persons of a prescribed description” without any limit on who those persons might be.

4 See paragraph 17 of the delegated powers memorandum.

5 See paragraph 33 of the delegated powers memorandum.

6 See paragraph 51 of the delegated powers memorandum.

It is very significant that the powers conferred by clause 12 will allow requirements to be imposed on domestic consumers, enforceable by financial penalties. If, as stated in the memorandum, it is not the Government's policy for the powers to be used in this way, then we recommend that this limitation should be set out on the face of the Bill.

Parliamentary scrutiny of regulations under Part 2

Provisions subject to the negative procedure

6. There are two provisions in Part 2 where the negative procedure will apply to all exercises of the power: clauses 9(3) and 13. Clause 9(3) allows regulations to require operators of a public charging point to ensure that its connecting components comply with prescribed requirements. It provides that the regulations may, in particular, include technical specifications for connecting components or related equipment, implying that the regulations may also include provisions which deal with matters other than technical specifications for charging points. It is not clear what these other matters might be. **The House may wish to seek further explanation on this point from the Minister.**

Provisions subject to first-time affirmative procedure

7. The other provisions of Part 2 are subject to the affirmative procedure for the first exercise of the power, with the negative procedure applying to subsequent exercises. For each of the provisions, the Department gives almost identical reasons for applying the first-time affirmative procedure: 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.
8. We are sceptical about the Department's argument. In a number of cases, the reason for taking the regulation-making power is linked to the developing nature of the market and other circumstances affecting charging points, and the likelihood of it evolving significantly in the future. This suggests to us that future changes to the regulations are likely to be significant in their own right and go beyond mere updating and certainly not be limited to what might be described as minor and technical.
9. Some of the powers which are subject to the first-time affirmative procedure are wide in scope and liable to have a significant impact on the operation of the legislation and those to whom the legislation applies:
 - Many of the requirements imposed by regulations under Part 2 are imposed on "operators" of public charging points. As noted above, the Bill itself gives no indication as to who is an operator for these purposes. Instead it is left wholly to regulations to define what is meant by the term. **Given the importance of the meaning of "operator" in determining who is to be subject to the requirements imposed by regulations under Part 2, we recommend that the affirmative procedure should apply to all exercises of the power to define that term.**

- Clause 10 allows the regulations to impose requirements on “large fuel retailers” and “service area operators” about providing public charging points on their premises. Again, the Bill itself gives no indication as to who falls within the terms “large fuel retailers” and “service area operators”. The Bill is also very open-ended as to the nature of requirements that might be imposed under clause 10. Examples are given in subsection (2), but these are not exhaustive. Again, this appears to be an area where the provision made by the regulations must be liable to change significantly over time, partly because of the untried and untested nature of the provision and also because of the likelihood that circumstances affecting the provision will similarly develop significantly over time. **Accordingly, we recommend that the affirmative procedure should apply to all exercises of the powers conferred by clause 10.**
- Clause 14 confers broad powers to enable the enforcement of breaches of any requirements or prohibitions imposed by regulations under Part 2. The powers under clause 14 include the power:
 - a. to impose a financial penalty, without any maximum specified on the face of the Bill;
 - b. to make provision for appeals;
 - c. to authorise entry on to land, and to remove items and documents etc., in order to test for compliance with the regulations.

Given the significant nature of these powers, we recommend that the affirmative procedure should apply in respect of all exercises of the powers conferred by clause 14.

FINANCE (NO. 2) BILL

10. This is a supply bill. The Committee does not report on supply bills save in exceptional circumstances. There is nothing in this Bill which we would wish to draw to the attention of the House.

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.