



Department
for Transport

From the Minister of State
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Baroness Taylor of Bolton
Chair
Select Committee on the Constitution
House of Lords
London
SW1A 0PW

23 OCT 2017

CC/17-19/34

Space Industry Bill [HL]

Dear Baroness Taylor

I am grateful to the Committee for its consideration of the Bill and thank you and the other members of the Committee for your hard work in producing these recommendations and advice.

I would like to take the opportunity to respond on the areas to which the Committee made recommendations in order to help the House with its deliberations on these points. I will respond to each recommendation in turn.

Henry VIII power – clause 66(4)

- (i) **We recommend that the Bill is explicit that the use of this power either to amend or repeal primary legislation is subject to the affirmative procedure. (paragraph 7)**

The Government agrees that there is some ambiguity in the drafting of this clause and that it is not clear that the affirmative resolution procedure would apply when the power is used to make regulations that repeal primary legislation. In light of this, the Government will bring forward an amendment at Report stage to clarify that the affirmative procedure would apply to statutory instruments that repeal or revoke primary legislation. We are taking this particular approach in the Space Industry Bill because this is a new and complex area and we want to ensure that there is the ability to make changes to cover any new areas that were not contemplated when the Bill drafted.

- (ii) **The House may wish to consider whether it would be more appropriate for the consent of the devolved legislatures to be required when this power is used to amend or repeal legislation enacted by them – as, for example, is the case for certain statutory instruments made under the Legislative and Regulatory Reform Act 2006 and the Public Bodies Act 2011. (paragraph 8).**

As the Committee is aware the Henry VIII power in the Bill is only to make consequential amendments and the subject matter of the Bill is all reserved. Therefore, the situation in which consequential amendments will be needed to devolved legislation are likely to be extremely limited. The devolved administrations have also been consulted on the details of the Bill and have confirmed they are content with the provisions it contains. However, as part of development of any consequential amendments which may affect primary legislation of the devolved administrations they would of course be consulted. This would be both at the policy development stage and on any draft regulations themselves.

Catch-all regulation-making power – clause 67(1)

- (iii) **We draw attention to this catch-all regulation-making power. The House may wish to seek clarification from the Government about its necessity and intended use. (paragraph 10).**

The power in clause 67(1) is consistent with that contained in section 60(2) of the Civil Aviation Act 1982. Section 60(2) is a power to do to anything “generally for regulating air navigation”. The Government notes the Committee’s concern that the provision may undercut the possibility of judicial review in the event Ministers exceed their delegated authority. However, the Government believes that the regulatory scope in clause 1(1) provides sufficient limitation on how Ministers can act when making regulations. Clause 1(1) will ensure that only regulations relating to the activities that are the subject matter of the Bill can be made by Ministers. In light of this, the Government does not believe that the ability to judicially review decisions by Ministers is undermined by clause 67(1). The current draft of the Bill represents an appropriate and balanced limitation on Ministers’ powers.

Power to grant enforcement authorisation – clause 32

(iv) We draw the attention to these enforcement authorisations and call on the Government to consider *post-hoc* judicial approval for their use. (paragraph 14)

The Government considers it has struck an appropriate balance in clause 32. It has taken a more conservative and restrictive approach than some authorisation procedures in other powers of entry legislation where there is no independent judicial authorisation before or after exercise of the power. In comparison both nuclear and health and safety inspectors are provided with a standing authorisation and are able to act at their own discretion. By contrast, persons issued with an enforcement authorisation under clause 32 are only authorised for a specified action and it is only in place for 48 hours. The Government believes that this provides the right balance of oversight whilst maintaining the flexibility for inspectors to enter premises in emergency situations where there is insufficient time or opportunity to obtain authorisation from a justice of the peace.

Sincerely

A handwritten signature in black ink, appearing to be 'John Hayes', written over a horizontal line.

THE RT HON JOHN HAYES CBE MP

