



HOUSE OF LORDS

Select Committee on the Constitution

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Lord Hendy of Richmond Hill
Department for Transport
Great Minster House
33 Horseferry Road
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By email

14 October 2024

Dear Lord Hendy,

Passenger Railway Services (Public Ownership) Bill

I write on behalf of the Constitution Committee about the Passenger Railway Services (Public Ownership) Bill.

Clause 3(2) is a Henry VIII power that empowers the Secretary of State, by regulations, to make amendments consequential to the Bill. Any regulations which will amend or repeal primary legislation are subject to the affirmative procedure. All other amendments by regulation will be subject to the negative procedure.

This is a broad power. In addition to making consequential, supplementary, incidental, transitional or saving provision, regulations made under clause 3(2) may make “different provision for different purposes”.

In the Government’s memorandum to the Delegated Powers and Regulatory Reform Committee clause 3(2) is justified as follows:

“Whilst every effort has been made to identify, and address, the necessary consequential amendments in the Bill, given the speed with which the Bill has been developed, the high volume of legislation relating to railway services and the importance of ensuring that rail passenger services continue to run without disruption, it is considered prudent to include the power.”¹

¹ Department for Transport, ‘Passenger Railway Services (Public Ownership) Bill: Memorandum from the Department for Transport to the Delegated Powers and Regulatory Reform Committee’, para 19: <https://bills.parliament.uk/publications/56125/documents/5043>

In *The Legislative Process: The Delegation of Powers* we concluded that:

“Henry VIII clauses are “a departure from constitutional principle. Departures from constitutional principle should be contemplated only where a full and clear explanation and justification is provided.” Such justification should set out the specific purpose that the Henry VIII power is designed to serve and how the power will be used. Widely drawn delegations of legislative authority cannot be justified solely by the need for speed and flexibility.”²

We reiterate our previous position that the need for speed alone cannot be used to justify Henry VIII powers. We invite the Minister to provide further justification as to why a Henry VIII power is necessary in these circumstances and an explanation as to how the power will be used.

In particular, we would welcome clarification as to whether the power in clause 3(2) could be used to affect the terms of the duty in clause 2 to provide passenger railway services where a relevant franchise agreement to do so comes to an end.

Yours sincerely,



Baroness Drake CBE
Chair of the Constitution Committee

² Constitution Committee, [The Legislative Process: The Delegation of Powers](#) (16th Report, Session 2017-19, HL Paper 225), para 67