

Bird & Bird Satellite Bulletin

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Legislate and they will come

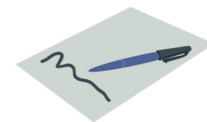
UK Spaceflight Bill – House of Commons Report

In its report on the Draft Spaceflight Bill published on 29 April 2017, the House of Commons Science and Technology Committee (Committee), *"have identified where modifications need to be made to clauses covering 'liabilities, indemnities and insurance'; an area where industry expressed concerns that the provisions (as they stand) could prove prohibitive for small satellites and low-mass spacecraft - two fields in which the UK is a recognised leader."*

The Draft Spaceflight Bill was published on 21 February 2017, and on 2 March the Committee launch an enquiry to examine the draft Bill, which resulted in the publication of its report. The key commercial recommendations from the Committee to the next UK Government, including in relation to liabilities, indemnities and insurance, are summarised as follows:

- the next Government should work with industry to ensure that the terminology used in the Bill reflects international norms as far as possible;
- the Committee queries whether the Government's "'legislate and they will come' approach underpinning the draft Bill will prove successful" and recommends that the next Government publishes a revised Impact Assessment which "includes a more detailed, monetised cost-benefit analysis" and "provides clear evidence that there are launch operators who are serious about locating in the UK and that legislative change - rather than funding - is what is required to enable them to do so";

- that the next Government "set out how it will address any barriers presented by ITAR";
- that "any future spaceflight bill fully clarifies who would need an operator licence and whether licences will be issued on a mission by mission basis";
- that a "memorandum of understanding between the European Aviation Safety Agency (EASA) and the Civil Aviation Authority is signed as soon as possible to cover the period while the UK is still a member of the European Union. This should confirm the conditions under which spaceflight would cease to be deemed 'experimental' by EASA and would start to be viewed as 'commercial'";
- that "in line with the 1986 Outer Space Act, licences issued under a future spaceflight bill must specify the maximum amount of the licensee's liability to indemnify Government";



- that the "next Government... should indemnify claimants for losses exceeding any prescribed limits on operators' liability, and for any uninsured loss above a licensee's minimum required level of insurance";
- clause 33 of the draft Bill grants a regulator immunity from liability in respect of spaceflight-related actions; the Committee recommended that the "next government... considers granting a further exception to the currently-drafted clause 33 where it can be shown that a future regulator has acted with gross negligence";
- that the "next Government must address the inappropriate delegations of legislative power contained in the current draft Bill at clause 21 and 51"; and
- clause 29 is entitled "Power to authorise entry in emergencies" and allows the Secretary of State to authorise the regulator to do "anything necessary" where someone involved in spaceflight activities does something which is a serious risk to national security, to compliance with the UK's international obligations, or to health and safety."; the Committee recommend that the next Government "removes clause 29 or restricts it to matters of national security and health and safety".

The Committee concluded that "the focus now will be on how a future bill will be implemented, and it is here that we have some concerns." "We appreciate that the regulatory structure needs to be flexible; it should be able to evolve as technology develops. Flexibility, however, does not preclude parliamentary engagement, debate and scrutiny." "If the next Government introduces a spaceflight bill it should... produce illustrative draft regulations to assist Parliament's scrutiny of its provisions."

It is hoped that the next Government will introduce a spaceflight bill. The draft Spaceflight Bill was not perfect - but was a robust start in the preparation of legislation to enable commercial spaceflight from the UK.

Over the last five years the Government has changed three aspects of UK regulation to make it more competitive internationally. The draft Spaceflight Bill potentially leaves open the possibility of a return to unlimited indemnities to the Government more generally from UK operators, which the next Government needs to consider carefully in an increasingly competitive state environment. The next Government also needs to reevaluate the third party liability insurance requirements for satellites, especially small satellites and constellations.

I would call on the next Government to put in place a more commercially feasible insurance model in its early months of office and propose a general cap on the unlimited indemnities of around Euro 60 million to encourage greater commercial investment into this fast growing sector.

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