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Lord Mendelsohn  
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22 January 2015

*Dear Tom,*

**SMALL BUSINESS ENTERPRISE AND EMPLOYMENT BILL:  
CHANGE IN PROCEDURE FOR MAKING REGULATIONS UNDER CLAUSE 38**

During the Grand Committee debate of the Small Business, Enterprise and Employment Bill on 14 January, you requested that I write to you with some additional information on changing the Parliamentary procedure to which any regulations made under Clause 38 (Public Sector Procurement) will be subject.

As I said in Committee, the Government is considering carefully the recommendation of the Delegated Powers and Regulatory Reform Committee, but we also need to consider the implications for timely delivery and whether this level of scrutiny will be appropriate for the technical changes to regulations that the power will be used to make subsequent to its first usage.

The Government is not yet convinced that it is necessary for the affirmative procedure to be used every time the power in this clause is used. Regulations about procurement have in the past been made under the negative procedure and some of the matters dealt with in regulations in this area are very technical and are likely to need to be adjusted over time.

I provided some examples in Committee, including that it may be necessary in the future to amend a list to describe new forms of pre-procurement engagement, or to adjust minimum and/or maximum timescales. It is worth considering whether a modest change in these areas would necessitate use of the affirmative procedure.

You also asked for further examples where the power may need to be used to act swiftly or react to economic circumstances. These could include a need to provide further support to small businesses in response to challenging economic conditions, introducing essential reforms to public procurement following an assessment of whether changes being introduced in the Public Contract Regulations 2015 have been effective and responding to recurring complaints raised by small businesses through the Mystery Shopper service.

As I mentioned in the debate, one option would be for the clause to require that the affirmative resolution procedure is used on the first occasion that the power is used, leaving it open for the negative procedure to be used thereafter. I would be grateful for your views on this.

I am copying this letter to those who contributed to the debate and placing a copy of this letter in the House libraries.

Warm regards  
Lray

**BARONESS NEVILLE-ROLFE DBE CMG**