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Dear Denis,

Thank you for meeting with me on 15 December to discuss the Air Traffic Management and Unmanned Aircraft (ATMUA) Bill. I promised to write and set out the Government's position with regards to your amendment to Schedule 8 which provides a constable with the power to destroy an unmanned aircraft (UA) as an alternative to requiring a person to ground it.

In my previous correspondence to you on this matter, I set out the powers available to destroy an UA, or associated article, once the item has been seized by the police. Whilst the points I set out in that letter still hold true, I would also like to clarify there is existing legal basis on which the police can rely to justify damage or destruction to an UA arising from police use of counter-UA technology. In addition, I thought it might be helpful to set out the technological and operational reasons why the police may not want to destroy a UA.

Section 3 of the Criminal Justice Act 1967 permits the police to reasonable use of force in the prevention of crime. Justification for the reasonable use of force will always be dependent on the precise circumstances they face.

Circumstances where it might *not* be reasonable include;

- where use of the counter-UA technology would risk significant injury to others (e.g. if used above the M25);
- where the operator or remote pilot is present and spoken to and immediately agrees to land the UA.

From a technological perspective, counter-UA system technology consists of three essential components; sensor systems that detect, track, and positively identify the aircraft; the countermeasures systems to mitigate or defeat the aircraft; and the communications and information systems that enable the sensors and countermeasures to interoperate. Detection equipment is commonly abbreviated 'DTI' and the generic term for mitigation / defeat countermeasures is an 'Effector'.

The new police counter-drones capability, as committed to in the Government's Counter-Unmanned Aircraft Strategy, published in October 2019, makes use of technology which is more sophisticated than arbitrarily "destroying the UA". It relies on defeat countermeasures which have a number of impacts on the UA, such as it "returning to home", landing the UA or forcing it to hover (specific outcome depends on specific UA programming). These impacts defeat the UA and prevent whatever malicious action it was going to take in a way which is more proportionate, more usable for the operator and less likely to cause unwanted collateral damage than if we were to destroy it during flight.

The use of this technology requires authorisation under Section 93 of the Police Act 1997. Use of such wireless telegraphy interference would amount to an offence under section 68(1) of the Wireless Telegraphy Act 2006 unless a Section 93 authorisation was in place. Currently, a Section 93 authorisation can only be given where a "serious crime" is being committed. The ATMUA Bill therefore amends Section 93 of the Police Act 1997 to enable the lawful use of counter UA technology that involves property interference (falling short of damage and destruction) and interference with wireless telegraphy when a UA is used in the commission of specific offences. This will ensure that authorisations can be granted for use of jamming technology to prevent UAs being used in crimes which do not fall within the definition of "serious crime". Without the amendment, a section 93 authorisation could not, for example, be given to the use of UA jamming technology to prevent a UA being used to commit the offence of endangering the safety of any person or property (Article 241 of the Air Navigation Order 2016)

The Bill also extends the range of public authorities who can authorise interference with property and/or wireless telegraphy in order to prevent or detect offences committed using a UA. This is in recognition of the fact that those organisations are best placed to assess whether it would be necessary and proportionate to use counter-UA technology in relation to the relevant area.

From an operational perspective, the aspiration for this Bill is that it remains proportionate, and that the actions of the police are reasonable. Since the legal basis for justifying damage or destruction to a UA already exists, the Bill does not need to include any further provision to allow this.

There are also specific operational reasons why the police would not want to destroy a UA, including:

- Maintaining presentable evidence as part of a police investigation and any subsequent court proceedings. Destroying a UA could render digital or forensic examinations impossible, potentially compromising an investigation;

- Police use of seized UA for advancing capability amongst officers – UA remain a new area for policing. Use of seized UA provide an extremely useful training tool to advancing knowledge amongst officers.

It is important to note here that the Government's position has always been to encourage UA usage in the UK, and this is a theme of the Counter-Unmanned Aircraft Strategy. In fact, conferring on the police a specific power to destroy an unmanned aircraft in the circumstances set out in paragraph 1 of Schedule 8 to the Bill could interfere with rights under the European Convention on Human Rights which protect people's peaceful enjoyment of their possessions. This is particularly likely in circumstances where there are reasonable grounds to suspect only that the UA *has been*, rather than is *likely to be*, used in the commission of an offence, and where there is no obvious risk of any impending offence or harm. The threat of litigation against the police for enforcing such a power would therefore be significant. It would likely compromise public perception of the police and risk of this provision being declared by a court to be incompatible with Convention rights.

The Government recognises the significant impact that criminal use of UA can have, whether that is to facilitate organised crime, to disrupt our national infrastructure, or to commit acts of terrorism. That is why the ATMUA Bill introduces new police powers to deter the unlawful use of UA and ensure that offenders are quickly dealt with in the appropriate manner.

Enforcement powers available to the police within Schedule 8 of the Bill include stop and search powers. These give the police the power to seize a UA, or an associated article, if they reasonably believe it is evidence in relation to one of the offences set out in paragraph 2 of Schedule 8. Similarly, when entering and searching premises under warrant using the powers in this Bill, a constable may seize a UA, or an article associated with a UA, if they have reason to believe that it has been involved in the commission of one of the offences set out in Schedule 8, paragraph 7 of the Bill.

There are also powers of seizure that exist in current law; for example, in relation to England and Wales, in the Police and Criminal Evidence Act 1984 (PACE 1984). Under Section 32 of PACE 1984, a constable can search an arrested person (provided they were not arrested at a police station) if the constable has reasonable grounds for believing that the person may be concealing evidence relating to an offence. Under section 32(9)(b) of PACE 1984, there is also a related power to seize and retain which requires the constable to have reasonable grounds for believing that the item is evidence of an offence or has been obtained in consequence of the commission of an offence. Section 19 of PACE 1984 also contains a power to seize if a constable is lawfully on any premises. This power requires the constable to have reasonable grounds for believing that the item has been obtained in consequence of the commission of the offence or that it is evidence in relation

to an offence which they are investigating or any other offence. Under section 22 of PACE, the constable may retain any items seized under section 19 for as long as is necessary. The police are therefore able to use any item seized as evidence to investigate and prosecute the person in question. The above powers are all proportionate steps police can take in order to prevent malicious use of UA occurring.

The solution to tackling this threat is multi-layered and does not solely reside in the UK Government. Legislation is one component (as are technological solutions), but these must be supplemented by other deterrence measures and a commitment from at risk-sectors to consider their vulnerability to malicious UA use. The Government's Counter-Unmanned Aircraft Strategy sets out our work on this and significant progress has been made;

- We are better prepared to respond to future incidents including at airports – the new police national capability (and its equipment) is a big part of this and it is supplemented by more established relationships between the police and airports and better response procedures
- We have improved our engagement with industry and international partners. This has included several industry engagement forums, most recently in November 2020.
- We are investing in developing counter-drones technology. The Home Office and DfT made a joint investment of £1.5 million into the Defence and Security Accelerator "*Countering Drones – Finding and neutralising small UAS threats*" competition. Combined with Ministry of Defence and Defence Science and Technology Laboratory contributions, this brought the competition total to over £3 million.
- We continue to support testing of commercial Detect, Track and Identify (DTI) equipment by the Centre for Protection of National Infrastructure, ensuring Government and Critical National Infrastructure can act as an intelligent customer.

I hope I have been able to reassure you that this Bill provides the police with sufficient powers to deal with UA offences, including the power to destroy an UA where it is absolutely necessary. I would be happy to facilitate a discussion with the Home Office and the police in the new year to discuss the contents of this letter in more detail, if that would be helpful.

I am copying this letter to all Noble Lords who spoke at Committee Stage and I will place a copy in the Library of the House.

Yours,  
Charlotte

**BARONESS VERE OF NORBITON**