

House of Commons
Regulatory Reform Committee

**THE OPERATION OF THE
REGULATORY REFORM ACT:
Government Response to the
Committee's First Special Report
of Session 2001-02**

Second Special Report of Session
2001–02

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REGULATORY REFORM COMMITTEE

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on proposals for regulatory reform orders under the Regulatory Reform Act 2001, and subsequently, any ensuing draft Regulatory Reform Order. It will also consider any “subordinate provisions order” made under the same Act.

Current Membership

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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No 141, available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/commons/selcom/drghome.htm. A list of Reports of the Committee in the current Parliament may be found at the back of this Report.

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SECOND SPECIAL REPORT

The Regulatory Reform Committee has agreed to the following Special Report:

THE OPERATION OF THE REGULATORY REFORM ACT: GOVERNMENT RESPONSE TO THE FIRST SPECIAL REPORT OF THE COMMITTEE, SESSION 2001-02

1. On 11 May 2001, our predecessor Deregulation Committee published its fourth and final report of the 2000-01 Session, entitled *The Final Deregulation Proposals* (HC 450). The report made a number of points concerning the consideration to be given to proposals and draft Orders under the Regulatory Reform Act.
2. The Government's memorandum of response to that report was published on 28 November 2001, as an Appendix to our First Special Report of this Session, *Further Report on the Handling of Regulatory Reform Orders* (HC 389). The remainder of the special report contained our response to the memorandum.
3. The Government's memorandum of response to our first special report was received on 17th May. It is published as an Appendix to this special report. We also heard oral evidence on 2nd July from Rt Hon Lord Macdonald of Tradeston, Minister for Regulatory Reform, Cabinet Office, Rt Hon John Spellar, MP, Minister of State, Department of Transport, and officials. The transcript of that session is also published with this special report.

APPENDIX**GOVERNMENT MEMORANDUM OF RESPONSE ON REGULATORY REFORM
ORDER-MAKING: CABINET OFFICE, MAY 2002****DEREGULATION AND REGULATORY REFORM COMMITTEE'S
FIRST SPECIAL REPORT,
SESSION 2001-02****1. INTRODUCTION**

- 1.1 This memorandum addresses issues relating to regulatory reform order-making as raised in:
- the 1st Special Report¹ of the 2001/02 Session by the Deregulation and Regulatory Reform Committee; and
 - Lord Alexander's letter of 19 December 2001 as chairman of the Delegated Powers and Regulatory Reform Committee commenting on the Commons Committee's 1st Special Report.
- 1.2 It also provides an overview of the first year's operation of the Regulatory Reform Act 2001.

2. 1ST SPECIAL REPORT

- 2.1 The Government welcomes the Report as further illustration of the Committee's helpful, scrupulous and collaborative approach towards regulatory reform order-making, which will prove instrumental to the successful implementation of the Regulatory Reform Act 2001.
- 2.2 Turning to the matters raised in the Report, the Government has the following points to make.

Pre-scrutiny consultation with the Committee

- 2.3 The Government is grateful for the Committee's willingness to entertain requests from Departments for 'without prejudice' guidance on particular issues relating to the use of the RRO procedure in advance of formal scrutiny of proposals.
- 2.4 This is a very helpful initiative that should go a long way to reassure Departments where there is uncertainty as to the Committee's likely views on particular technical points and on issues of appropriateness. It is particularly valuable given that we are still in the early stages of the Act's life. In view of the front-loaded nature of the order-making process, it should also reduce the prospect of abortive work and increase the speed with which Departments can come forward with proposals.
- 2.5 As the Committee will know, in the short time since the Committee made the offer of informal advice, it has already been taken up in the following instances:

¹ HC389, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmsselect/cmdereg/389/38902.htm>

- the proposal to remove a requirement for a *sugar beet research programme*, where DEFRA sought the Committee's views on the extent to which consultation undertaken prior to the 2001 Act could be held to satisfy that Act's consultation requirements;
- the proposal for a new *Health Protection Agency*, where the Department of Health sought views on the appointment of Board members to help with preparations but in advance of the Agency being placed on a statutory footing;
- the proposal on *deregulation of bingo legislation*, where the Department of Culture Media and Sport proposed to reject a Committee recommendation given the favourable responses to the issue as consulted on in the Budd report.

2.6 The Government is grateful for the helpful advice offered in these cases by both Committees, and is happy to re-assure them that it will continue to treat the advice offered by both Committees under this mechanism as 'without prejudice' to the formal scrutiny stages of the proposal.

2.7 The Government also fully accepts that this mechanism should not be treated as a substitute for proper analysis by Departments, but rather as a complement to it in cases of doubt.

Timetabling

2.8 The Government agrees that both it and Parliament should work to achieve an even flow of order-making. In particular, the Government also welcomes the Committee's:

- desire to see *full and appropriate use* of the regulatory reform order-making procedure;
- willingness to *entertain requests to accept more than one order* a week in the short term—this has occurred twice to date in relation to the 1st stage² proposals for the Golden Jubilee and for disposals of dwelling houses on 28 November 2001, and the 2nd stage draft of the Golden Jubilee licensing order and for the voluntary-aided schools order on 25 and 26 of February 2002 respectively; and
- acknowledgement that there is a *difference in the level of resources* required by the Committees to scrutinise draft orders at 2nd stage as opposed to proposals at 1st stage scrutiny, as contended at paragraph 15 of the Government's previous memorandum.³

2.9 In relation to the final point about the workload at 2nd stage scrutiny, the Government's view is that the Committees' reports on draft orders to date have demonstrated that 2nd stage proposals will generally raise far fewer, if any, issues for the Committees than those at 1st stage, as follows:

² Proposals are laid "in the form of a draft" for an initial 60 day scrutiny period (1st stage) after which the Committees report. They are then tabled as draft orders for a further period of up to 15 sitting days (2nd stage), after which the Committees again report. If the Committees recommend approval, there is then a motion to approve in each House. Once both Houses have approved the order, it can be made.

³ As annexed to HoC 389, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/389/38904.htm>

- the *Special Occasions order*⁴ where the Department shared with the Committee both the legal advice given by Treasury Counsel and a re-worked draft of the order before the 1st scrutiny stage had finished—this was in order to ensure a smooth passage at 2nd stage scrutiny;
- the *Golden Jubilee Licensing order*,⁵ where no substantive issues were identified; and
- the *Voluntary-aided Schools proposal*,⁶ where the Committee suggested a minor change which was the extension of an existing policy and some technical drafting changes.

Indeed, where a problem did arise early in the 2nd stage scrutiny of the proposal concerning the correction of birth and death entries in registers,⁷ the Government withdrew the draft order in question. It then re-tabled it suitably amended in order to avoid putting the Committee in the position of having to report with an adverse recommendation at 2nd stage.

- 2.10 However, the Government remains concerned at the implications for its programme of regulatory reform of the Committees' capacity constraints. While the Lords sits for around 40 sitting weeks, the Commons sits on average for 36 weeks in the Parliamentary year. The Committees have both indicated a strong initial preference that, in the interests of ensuring a steady flow of work, no more than one proposal at either scrutiny stage should be tabled per sitting week.
- 2.11 As previously rehearsed, this means an effective maximum throughput of some 18 orders per year.⁸
- 2.12 As the Committee will know, a list of 51 examples of potential orders accompanied the Regulatory Reform Bill's 2nd Reading in the Commons. This has been refreshed with the publication in February 2002 of the Regulatory Reform Action Plan,⁹ which sets out proposals for up to 63 RROs. The Committee may find it helpful, in the interests of transparency, to see the reconciliation given at Annex A and Annex B. It is worth pointing out that 29 out of these publicly announced reforms cite 2003 as a possible completion date. A further 18 do not have a definite completion date but a significant proportion of these are likely to be ready to undergo Parliamentary scrutiny in 2003. It would seem reasonable to assume that there is a possibility of there being perhaps up to 40 RROs that the Government may wish to see completed in 2003, more than double that of the present capacity of the scrutiny process based on its one-a-week policy.
- 2.13 The Government notes the Committee's position that, given its experience to date, it remains to be convinced that such a large number of proposals will be brought forward that the one-per-week restriction will be a problem. The Government accepts that there is no imminent risk of blockage. Nevertheless, as the Government has made clear the launch of the RRAP is just the starting point of its new Regulatory Reform drive and a considerable increase in the number of new proposals for RROs coming forward is expected for 2003. The Government notes

⁴ HoC 388, <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmdereg/388/38803.htm>

⁵ HoC 677, <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmdereg/677/67703.htm>

⁶ As for footnote 5 above.

⁷ <http://www.cabinet-office.gov.uk/regulation/act/proposals.htm#Births>

⁸ Orders have to go through 2 scrutiny stages. Only one proposal in "the form of a draft order" or one draft order can be tabled in any one sitting week. This effectively halves the time available, producing a total average maximum throughput of around 18 orders per annum.

⁹ <http://www.cabinet-office.gov.uk/regulation/actionplan/docs/rrap.pdf>

that, at this rate of progress, these RRO commitments could take three years or more to deliver. This would be disappointing given that the purpose of the proposals is to secure wide-ranging beneficial reforms.

- 2.14 The Government considers it prudent, rather than premature, for all those involved to plan ahead to prevent the order-making programme clogging up. The alternative is to wait for a blockage before deciding to do something about it. It is, of course, for the House to determine the arrangements for scrutiny but the Government believes that there is a real risk of logjams developing in the medium term.
- 2.15 Instead of a formal one-per week rule even with the possibility of exceptions, the Government would prefer moving to an effects-based approach that would allow proper scope for more than one order to be considered in any one sitting week, especially:
- where the proposal, whether at 1st or 2nd stage scrutiny, is small or uncomplicated; or
 - in relation to a 2nd stage proposal where the Committee made no recommendations or only in relation to minor or technical issues at 1st stage scrutiny; or
 - where the Government proposes to accept all the recommendations of the Committees at 2nd stage scrutiny. The Government accepts that the proposal at this stage is a draft Statutory Instrument, and must be subject to due process. However, it is likely to be clear in most cases following the 1st stage report what needs to be amended and how. For those cases, the Government does not consider that the work involved in checking compliance to be such as to require exclusivity. It recognises, though, that where the Department has changed the legal text substantially, whether through a large number of minor changes or through a major re-drafting as was the case with the Special Occasions order, a greater degree of scrutiny will be needed. And, for those cases, the Government would hope to show re-drafts to the Committee at an early stage in order to reduce the burden, again as happened with the Special Occasions Order. The Government notes with appreciation, for example, that the Committees were particularly prompt in dealing with the significant re-drafting required at the 2nd stage of the Special Occasions Order; or
 - where the recommendations of one Committee conflict or are inconsistent with those of the other, the Government has negotiated a solution acceptable to all concerned prior to laying for 2nd stage scrutiny. In such cases, the approach could be agreed through use of the informal ‘without prejudice’ advice mechanism.
- 2.16 To that end, the Government suggests that there may be merit in the Committee considering the following options. They are offered as suggestions rather than firm proposals:
- the *Committees* could indicate in their 1st stage report, either in particular cases or for each instance, whether the work involved at 2nd stage was:
 - unlikely to be onerous and that the Committee would not object to it being tabled alongside other proposals; or

- likely to be sufficient, given the nature of the recommendations made, that it should be taken on its own.
- the *Department* could indicate, either in the Explanatory Document at 1st stage scrutiny or when giving notice of the intention to lay, that they consider a particular proposal to be:
 - so straightforward or small that the additional work involved would be marginal, with sufficient resources available for other proposals to be considered, all other things being equal; or
 - so large and/or complicated that a buffer zone would be needed. This might apply, for example, in the case of the proposal for the reform of fire safety legislation, and would mean that no other proposals would be tabled at the same time. This would enable the Committees to concentrate exclusively on the issues raised, all other things being equal—and would, we envisage, be the exception;

It would, of course, be entirely for the Committee to decide whether it could accept the Government's request. In cases of doubt, the Government could seek the advice of the Committees under the 'without prejudice' procedure prior to tabling the proposal for scrutiny.

- 2.17 It may be that the Committee can devise other approaches that could help reduce or remove this perceived blockage, and which would preserve flexibility and are easy to administer. The Government would welcome firm proposals from the Committee as to suitable ways in which to pre-empt a backlog building up.

Adverse Reports

- 2.18 The Standing Orders do not appear to make provision for what should happen if, as a result of its 2nd stage scrutiny, the Committee were minded to report approving a draft order, but subject to the Department making certain changes or to some other recommendation. The Government is concerned that, if one or other Committee reported adversely at 2nd stage scrutiny but made recommendations as to the ways in which the proposal could be made acceptable, the Department concerned may need to re-start the scrutiny process, whether at 1st or 2nd stage. This could cause additional and unwelcome delay. The Government would appreciate the Committee's views on the options.

Forward Look

- 2.19 The Government is happy to issue monthly work plans as the Committee requests and indeed issued the first of these on 4 January covering the period up to the beginning of February. They are now given a wide circulation within Whitehall in order to ensure that stakeholders are aware of RRO activity.
- 2.20 The Government welcomes the Committee's intention to publish the monthly work plans in its reports.

Appropriateness

- 2.21 The Government notes the Committee's statement that it is:

“... happy to reassure the Government that the Committee has no intention of subverting the intentions of Parliament in passing the Regulatory Reform Act by unduly restricting the scope of that Act”.

- 2.22 In particular, it appreciates the Committee’s clarification of its predecessor’s comments in their 4th and final report.¹⁰ It agrees with the Committee’s view that the procedure should not be used for implementing policy changes so substantial (in the sense of being both “large and controversial”) as to require the much higher-profile attention paid by Parliament to primary legislation.
- 2.23 Bearing in mind the wide-ranging nature and extent of the sorts of reforms Parliament envisaged in passing the Regulatory Reform Act 2001, the Government agrees with the Committee’s conclusion that it will consider the appropriateness of proposals on a case-by-case basis based upon its competency to come to the necessary judgements on behalf of the House.
- 2.24 The Government is, in turn, happy to reassure the Committee that it has no intention of using the RRO procedure as a “form of primary legislation by stealth”. It finds it hard to see how an RRO could, in fact, be used stealthily, given the rigour, openness and transparency of the procedure. Indeed, it agrees with the Committee’s comment in its 8th Report¹¹ that proposals such as the Carer’s Allowance proposal “would in practice receive less scrutiny if considered in the context of a wider Bill.”
- 2.25 The Government also views the appropriateness criterion as self-policing in that it will not be difficult to determine whether a proposal was so “large and controversial” as to require debate on the floor of the House.

Standing order procedures in the event of disagreement

- 2.26 The Government welcomes the Committee’s statement and recommendation in its report that:

“20. We accept that it may be the case that agreement cannot be reached about particular aspects of a proposal; and we accept that the House has provided for procedures which can be used in the event that that happens. We also welcome the Government’s undertaking that the procedure should not be used in cases where the Committee expresses outright opposition to the draft order as a whole. However, we regard it as unfortunate that the Government should not have made it clear that it was its intention to use the procedure in the way described here either in debate on the Bill or, more particularly, in the debate on the Standing Order changes which were made as a result of passage of the Regulatory Reform Act.

“21. We believe it would go some way to showing that the Government is acting in good faith, and within the spirit of the undertakings given to the House “not to force orders through in the face of opposition from the Committee,” if the Government were to undertake to provide for a free vote in such circumstances; and we so recommend. That way the arguments could be tested and the House come to a decision without any suggestion that the Government was forcing an Order through by using its Parliamentary majority.”

- 2.27 The Government has not sought to conceal anything, and hopes that the dialogue with the Committee since the bill was enacted over the precise nature of the

¹⁰ HoC 177, <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmdereg/177/17702.htm>

¹¹ HoC 691, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/691/69102.htm>

undertaking, long before any pressure of events, will be taken as evidence of good faith.

- 2.28 The Government notes that the Liaison Committee in its 1st Report¹² re-iterates the point on behalf of the Committee:

“26. We have also received Reports from two select committees which operate in the legislative area. [...] The Deregulation and Regulatory Reform Committee, the successor to the Deregulation Committee, raises particular issues concerning its relations with the Government. In particular, it is seeking to ensure an even flow of items before the Committee, and to protect the freedom of its members to support the Committee’s recommendations in a subsequent vote on a substantive motion. The latter issue could be one of concern to us as well, if select committee Reports were to be debated in this way, as our predecessors recommended.”

- 2.29 The Government would like to emphasise that its concern is only over what would happen to those proposals where the Committee may well agree with the main thrust of the proposed order, as expressed in their 1st stage report, but where they recommend that the order be not approved at 2nd stage. This may be because of a disagreement in principle with the Government on an aspect of the proposal. It envisages that these will be very much exceptions to the rule.

- 2.30 The Government further hopes that the following points will help re-assure the Committee:

- the procedures in Standing Orders exist for a purpose—the Government does not envisage that they will be used except in exceptional circumstances. This is because of the very nature of the super-affirmative process: RRO proposals are generally non-controversial and non-party-political, grounded in thorough consultation and exposed to rigorous scrutiny. Given that each House is co-equal, the ethos is one of conciliation, co-operation and co-decision—and the Government expects that this will remain the case;
- the Regulatory Reform Committees—and their predecessors—in both Houses have always been un-Whipped (and indeed the Government notes that, in its entire history, the Commons Committee has only divided once on Party lines in relation to the Trades Unions subscriptions check-off deregulation order). For the Government’s part, that will continue to be the case;
- the Government is happy to repeat the commitment made during the passage of the Bill that it would not proceed with a motion to approve in the face of a hostile or wholly adverse report from the Committees (see paragraph 15 of the Explanatory Notes).¹³

But it gives me the opportunity to repeat the assurance given by my noble and learned friend in May of last year. At that time the Government undertook to continue to respect the convention that no measure under the Deregulation and Contracting Out Act should be forced through in the face of the committee’s opposition. The noble Lord, Lord Goodhart, and the noble Viscounts, Lord Goschen and Lord

¹² HoC 590, <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmliaisn/590/59004.htm>

¹³ <http://www.legislation.hmso.gov.uk/acts/en/2001en06.htm>

Bridgeman, asked for that assurance and I am happy to repeat the undertaking today.¹⁴

- 2.31 In line with its undertaking, the Government would not proceed in the case of an entirely adverse report. The Government would, of course, reserve the right to withdraw the measure or to re-introduce it as a bill.
- 2.32 The Government was of the opinion that the Standing Order procedure could usefully have been used to resolve impasse. But the prospect seems so unlikely as not to be worth providing for. The Government expects that, where it disagrees with a Committee recommendation on a 2nd stage report, it would first seek to respond to the Committee's report in order to see whether a resolution was possible. It envisages that the exchange would continue until a solution was found. Where no resolution was forthcoming, the Government accepts that, in practice, by far the most likely outcome would be for it to withdraw the order, rather than press the point to a formal debate. It recognises that, in doing so, it would sacrifice a beneficial reform.
- 2.33 However, as the Committee says, "it may be the case that agreement cannot be reached about particular aspects of a proposal;" and "the House has provided for procedures which can be used in the event that that happens." The Government is happy to pledge that these procedures would only be used in the most extreme circumstances. It cannot undertake never to put a draft Order to the House in spite of an adverse recommendation, since it is impossible to predict the future. Nor can the Government pledge to withdraw the Whip since, for such a debate to happen, the Government would have to be convinced that the matter was highly significant, and the Committee's recommendation completely unworkable.
- 2.34 It is our hope that a debate on a motion to disagree with the Committee's report would never happen. In the unlikely event that such a debate ever takes place, the Government undertakes that it would provide the House with a document setting out its reasons for disagreeing with an aspect of the Committee's report so that Members could begin to consider the arguments before the debate itself.

Interpretation of Vires

- 2.35 The Government intends to issue a guidance note on the meaning of the term "burden" and is happy to share this with the Committee in draft form before making it generally available.
- 2.36 The note is currently in early draft since it draws on experience of order-making and needs to be cleared widely within Government.

Conclusion

- 2.37 The Government thanks the Committee for its helpful and constructive response to its initial memorandum. It hopes that the further reassurances given will satisfy the Committee.

¹⁴ Lord McIntosh of Haringey, Lords Hansard, 21 Dec 2000: Column 899, and Lord Falconer re-affirmed this intention in his evidence to the Delegated Powers and Deregulation Committee as cited in its 15th Report (HL 61 of the 1999/2000 session).

3. LETTER FROM LORD ALEXANDER

- 3.1 Lord Alexander wrote on 19 December 2001 as chairman of the Delegated Powers and Regulatory Reform Committee commenting on the Commons Committee's 1st Special Report.

Pre-scrutiny consultation with the Committee

- 3.2 In his letter, Lord Alexander helpfully makes it clear that the Lords Committee is also happy to entertain requests for "without prejudice" pre-scrutiny guidance on technical issues connected with the Regulatory Reform procedure.

Forward Look

- 3.3 Lord Alexander also welcomed the introduction of a monthly "Forward Look" report from the Government.

Appropriateness

- 3.4 The Lords Committee agreed with the Commons Committee's approach to deciding on the issue of "appropriateness" in particular cases. This will involve forming a view as to whether the Committee feels itself competent to come to the necessary judgements in respect of any proposal on behalf of its House. If the Committee concludes that it is not, it will make clear its view that the proposal in question should be debated and voted upon by the whole House.
- 3.5 Given its reassurance about not bringing forward proposals for RROs that are both "large and controversial", the Government considers that to be the right way forward.
- 3.6 The Government would also like once again to thank the Committee for the flexibility it has shown regarding the laying of proposals to date, especially given its other responsibilities.

4. OVERVIEW OF THE OPERATION OF THE REGULATORY REFORM ACT 2001

- 4.1 During the passage of the Regulatory Reform Bill, Lord Falconer gave the following commitment:

... "I can and do undertake on behalf of the Government that a Minister of the Crown will report to this House three years after enactment—I say three years rather than two years; I am not sure that that is a critical point between us--on the operation of the regulatory reform act should it become an Act. I undertake that that report will cover the operation of the order-making process and any associated constitutional and procedural issues. As the debates to date have indicated, these are areas of key concern to your Lordships' House. It is right that the government of the day should address them fully. After that first report, it would be for the government of the day and the House to decide on the need for any further report. The timing, scale and scope of the next report seems to me a matter best decided after that. I do not think that it would be right for such reports to reopen matters of policy which had been debated fully during the consultation, scrutiny and approval stage of the order-making process. There would be no point if a reformed

regulatory regime order was working smoothly. Indeed, it could cause uncertainty. But the process—how the system is working—needs to be looked at”.¹⁵

- 4.2 The Government believes that, while we are only at the Act’s first anniversary, it would be helpful to set out a summary of progress made and some of the lessons learnt.

Work to date

- 4.3 The Regulatory Reform Act 2001 received Royal Assent on 10 April 2001, and the following table summarises activity up to early May 2002:

Stage	RROs	DOs
Made	3	4
Awaiting Parliamentary votes	2	-
Stage 2 scrutiny	1	-
Awaiting stage 2 scrutiny	-	
Stage 1 scrutiny	1	-
Consultation completed, preparing for Stage 1 scrutiny	3 ¹⁶	-
Out to consultation	1	-
Totals:	11	4

A full list of proposals laid before Parliament since the passage of the 2001 Act can be found at Annex C.

- 4.4 To date, six RRO proposals have been laid before Parliament and five more have been publicly consulted upon. Three RROs are now in force on the statute books. The first Regulatory Reform Order—the Special Occasions Order—was made on 6 December 2001.¹⁷ Two more—the reform of funding and liabilities for the estates work at Voluntary Aided Schools and the reform of alcohol licensing for the Queen’s Golden Jubilee celebrations—have now been made. Another two—the Vaccine Damage and Invalid Care proposals—are likely to be made in a matter of weeks.
- 4.5 By comparison, no deregulation orders were made in the year the Deregulation and Contracting Out Act was passed, and only two in 1995. They also concerned reforms of a more limited nature.¹⁸

Deregulation Orders and Standing Orders

- 4.6 All four outstanding deregulation orders¹⁹ that were tabled while the Bill was still going through Parliament have now completed their scrutiny stages and three have now been made:

¹⁵ Lords Hansard (13 Feb 2001: Column 215).

¹⁶ Those are: DTLR’s business tenancies proposal and the proposal to reform s.57 Landlord & Tenant Act 1957, and HMT’s credit unions proposals.

¹⁷ see <http://www.cabinet-office.gov.uk/regulation/act/orders95.htm>

¹⁸ see <http://www.cabinet-office.gov.uk/regulation/act/orders95.htm>

¹⁹ <http://www.cabinet-office.gov.uk/regulation/act/orders.htm>

- The Deregulation (Restaurant Licensing Hours) Order 2002;
- The Deregulation (Bingo and Other Gaming) Order 2002; and
- The Deregulation (Disposals of Dwelling-houses by Local Authorities) Order 2002.

The final deregulation order—the Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002—is awaiting the motion to approve in the House of Lords which is scheduled for 14 May.

This brings the final total for deregulation orders made to 52 orders. No further deregulation orders are possible, except for those made by the Scottish Parliament in relation to devolved matters.

- 4.7 The Committee comment in their 9th report²⁰ on the draft Correction of Birth and Death Entries Deregulation order, as follows:

“12. Finally, we note that this is the last of the draft Orders to be brought forward under the old Deregulation and Contracting Out Act 1994, which has for almost all relevant purposes now been superseded by the Regulatory Reform Act 2001. We are pleased that all these Orders have now been dealt with, and we look forward to the Government making time for the appropriate rationalisation of the Standing Order governing our work, including a change of name to the Regulatory Reform Committee.”

- 4.8 The Government agrees with the Committee’s view that its Standing Orders should be revised to reflect the change in its business. It is, of course, for the House to decide on the precise nature of the changes, and the Government looks forward to them being made in the near future.

Committee procedures

- 4.9 The Committee also states in its 9th report²¹ that:

“28. Notwithstanding our comments above concerning the nature of the representations which have been made to us about this proposal, we would like to take the opportunity to remind other Members of the House of the procedures available for debate on issues, such as these, which may be unconnected with the regulatory reform criteria and therefore outwith the normal remit of this Committee—or indeed any issue concerning a regulatory reform proposal which other Members may wish to pursue. Standing Orders provide that this Committee may invite Members of the House who are not Members of the Committee to attend meetings at which witnesses are being examined; and that such Members may, at the discretion of the Chairman, ask questions of those witnesses. This procedure may be considered analogous to the debate in Standing Committee which would normally take place on orders subject to the affirmative resolution procedure, and is in addition to the provision for debate on the floor of the House should the Committee divide on its recommendation as to whether the draft Order should be approved.

“29. Although this procedure has been available since the institution of the deregulation procedure in 1994, it was never used by our predecessor Deregulation Committee, nor have we yet found occasion to use it ourselves. However, should any Member, now or in the future, wish to make representations to us that the

²⁰ HoC 708, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/708/70802.htm>

²¹ See footnote 19.

procedure should be used in any particular case, we will of course consider those representations, and if appropriate make arrangements for a hearing before the Committee.”

- 4.10 This proposal is clearly a matter for the House and for the Committee, but the Government recognises this as a potentially valuable way of involving MPs more closely in regulatory reform order-making. It complements the Government’s suggestion below that MPs should be encouraged to sponsor reforms for take up by Ministers as proposed regulatory reform orders.

Scope and nature of RRO proposals

- 4.11 The Government notes that the Clerk to the Delegated Powers and Regulatory Reform Committee wrote to Lord Macdonald on 20 February 2002 stating that:

“the Committee considers that the proposals which are now starting to come before it... are worthwhile improvements to the law and are exactly the sort of reforms which they hoped the new procedure would make possible.”

The Government agrees with the Committee that, as the letter goes on to say in relation to the proposed Fire Safety RRO:

“if such major overhaul of significant areas of law can be achieved using the powers of the 2001 Act, this will be a major step forward.”

- 4.12 The Government also notes that the order-making process is qualitative in nature, requiring the same sorts of resources that would be needed if the proposal were to be taken forward by primary legislation. It agrees with the Commons Committee’s remark in its 1st Report²² that:

“the regulatory reform procedure is no “easy route” for ill-considered or badly handled proposals. Properly conducted, however, it provides an excellent opportunity to effect reforms which might not otherwise see the light of Parliamentary day.”

- 4.13 It is Government policy to use RROs whenever possible as a legislative vehicle and the Government looks forward to a substantial increase in throughput as the order-making power establishes itself as a viable and powerful alternative to Bills.

Scrutiny arrangements

- 4.14 The Government recognises that the initial scrutiny period cannot be varied according to the work involved in particular proposals. From the proposals laid before Parliament to date, the Government believes that the length of this period—60 calendar days excluding breaks of more than 4 days—is proving sufficient given that the proposals are tabled in completed form and with comprehensive supporting documentation.

- 4.15 The Government also notes the close working relationship between the Lords and Commons Committees, which the Clerk to the Lords Committee describes as “proving very fruitful, and is probably closer than in any other area of co-operation between the Lords and Commons.”

²² HoC 265 <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/265/26503.htm>

- 4.16 The Government notes that the Act adopts a one-size-fits-all approach. This was clearly right for deregulation orders that tended to be relatively small and limited in scope. In developing the Bill, the Government hoped that the superaffirmative procedure could be used for both small and large proposals. However, the Government considers that there may be circumstances where the procedures, taken as a whole, are too burdensome. For example, it may be that an expedited procedure would be appropriate for those that are simple, uncomplicated and command widespread support. It is our experience that some Departments are put off using RROs because of the time-scales and bureaucracy involved.
- 4.17 The Government fully accepts that the Committees have to work within the framework provided by the Act, and that any such changes to the Act would need to be taken forward by way of a Bill. The Government will keep under review whether this rigorous and protracted scrutiny is appropriate for all proposals. It may be that the Committees have their own ideas as to the ways in which the process and the legislation could be improved, and the Government would welcome the opportunity of debating them with the Committee.

Drafting

- 4.18 The Government understands the importance of the careful and precise drafting of proposals and draft RROs.
- 4.19 The Commons Committee pointed out in an initial report²³ on one proposal that the legal drafting did not meet the necessary standard:
- “It appears to us that the reason for the poor standard of drafting in this case may have been the result of the proposal having to be laid before Parliament in something of a hurry, in order to ensure that it could pass through the necessary Parliamentary stages in time for implementation on the planned date of 1 April 2002. We appreciate the need for speed in this case, given the objective of implementing these changes by that date, and the desirability of ensuring that all parties involved were given sufficient time to prepare for it. However, **we remind Departments that the requirement under the Regulatory Reform Act is to lay before Parliament “proposals in the form of a draft of the Order, together with [an explanatory memorandum].” The draft Order is not therefore simply an indicative adjunct to the policy proposals contained in the explanatory memorandum, but should rather represent a full and complete expression of how those proposals are to be given legislative effect. We trust that future proposals will come before Parliament in such a state as to ensure that this is the case**”.²⁴
- 4.20 The Government appreciates that, although tabled “in the form of a draft order” at 1st stage scrutiny and then as a draft order for 2nd stage, the legal text of the instrument must be complete and final, rather than a work-in-progress. The Government is pleased to note that the final report²⁵ on the proposal acknowledges that the Department concerned acted promptly to correct this. It notes the importance of ensuring that proposals are drafted carefully so that they meet the necessary standards to give proper legal effect to the policy proposal.
- 4.21 It is worth noting that, just as the Committee is concerned about the level of its own resourcing, there are emerging concerns within Departments as to the legal and

²³ HoC 583, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/583/58302.htm>

²⁴ HoC 311, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/583/58311.htm>

²⁵ HoC 677, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/677/67702.htm>

other resources required for the development of RRO proposals. While committed to a demanding programme of regulatory reform order-making, Departments must balance resources against competing priorities. RROs require equivalent resources to Bill work but place increased burdens on Departmental lawyers. The Committee might like to note that, to help ensure quality, the Regulatory Impact Unit has recently increased its legal resources in order to help advise Departmental lawyers on drafting and vires issues.

- 4.22 There are also still aspects of the Act where we have yet to develop precedents: for instance, we have yet to come forward with a free-standing RRO that repeals and replaces Acts of Parliament as opposed to inserting amendments into them, and this may require a different approach.
- 4.23 The Government notes the additional pressures on internal resources created by regulatory reform order-making, and will keep its options under review for managing the order-making programme.

Devolution

- 4.24 The 2001 Act was designed with the various devolution settlements in mind. The Government, for example, is monitoring closely the operation of the requirement in the Act for the Welsh Assembly to give its consent to proposals to vary or remove a function that had been transferred to it. The Act requires this to be signified when the order is about to be made.
- 4.25 Some Departments have discovered that this requirement can be an unexpected source of delay. There is an emerging procedural arrangement that the Assembly will indicate its consent where needed before the order is laid for 2nd stage scrutiny. That is what happened, for example, in the case of DTLR's housing grants and loans proposal.
- 4.26 The Welsh Assembly Government will have been consulted on the detail at much earlier stages of policy development, but there is still the possibility that, after the Committees have reported on a proposal, the Assembly plenary session could withhold its consent or that it could attach conditions. If that were to happen, the Government would need to consider carefully whether we could proceed with the RRO. We might need either to re-consult or to re-table the order or, at worst, to drop it or confine it to England only. That raises the prospect of disappointment for consultees whose expectations had been raised and of criticism from the Committees whose time and energies would have been fruitless. The Government would be interested in the Committee's views on the timing considerations at issue here.

Explanatory Documents

- 4.27 The Government has also taken the step of making the explanatory documents that accompany the proposal at both scrutiny stages available on the Cabinet Office website.²⁶ This parallels the availability of the Explanatory Notes that accompany the introduction of Bills in either House.
- 4.28 The Government has taken this step in order to increase further the transparency of the order-making process. It should also help ensure that people who wish to make representations to the Committees or to the Minister at that stage (such as those

²⁶ <http://www.cabinet-office.gov.uk/regulation/act/proposals.htm>

who were not for whatever reason able to comment during the consultation period) can do so on an informed basis.

- 4.29 The Government notes from Committee's²⁷ 4th report that it has, on occasion, required additional information to supplement that given in the Explanatory Document at 1st stage scrutiny:

"We did, however, find it necessary to extract a significant amount of information from the Department in addition to that contained in the explanatory document before we could be satisfied that the proposal could proceed."

- 4.30 The Government notes this concern and will re-emphasise to Departments the need for the explanatory documents provided at each scrutiny stage to be as comprehensive as possible. The Government believes that good policy making is embedded in proper use of the order-making procedure. It welcomes that Committee's illustration in that report of the way in which the process can result in further improvements:

"21. We were pleased to note the Department's acknowledgement of the benefits of pursuing the Regulatory Reform Order route to legislative change. "[This] route has helped in building awareness of our proposals and achieving a strong consensus for change amongst all key stakeholders," it says, and quotes a response from the Chief Building Surveyor at Portsmouth City Council which commented favourably on the explanatory document laid with this proposal. We hope other Departments, and other interested parties, will find the Regulatory Reform Order route similarly attractive, and we welcome the stated commitment of the Department for Education and Skills to using the procedures available under the Regulatory Reform Act."

The Government shares that view.

Consultation

- 4.31 The Committees have previously expressed their strong views that effective consultation is at the heart of the regulatory reform order-making process, and that their role is to ensure that each Department proposing an RRO has properly discharged its responsibilities in that respect. The Government considers this function of the Committees to be a powerful guarantee of the order-making process.

- 4.32 The Government notes the Committee's criticisms in its 9th report:

"11. We cannot conclude our Report on this draft Order, however, without expressing our dissatisfaction at the way it has been handled by the Government Departments concerned. Although the eventual result was, in our opinion, the right one, neither the Office for National Statistics (ONS) nor the Official Solicitor's office emerge from this saga with much credit. The ONS should have made sure that all Government departments, and parts of departments, with an interest in the proposal were consulted even before an official public consultation document was issued. For its part, the failure of the Official Solicitor's office to respond in timely fashion to ONS's requests for further comments on the concerns originally raised on the second round of consultation was, to say the least, unfortunate. We trust that other Departments will learn the lessons of ONS's experience, and ensure that all necessary consultation is carried out in a full and timely manner."

²⁷ HoC 583, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/583/58302.htm>

- 4.33 The Government agrees with the Committee that proposals for RROs should, so far as is possible, be cleared internally with relevant Government Departments or parts of Departments as early as practicable. This is undertaken as a matter of standard practice as part of the collective process of Government, and as such any views expressed are incorporated in the supporting documentation. However, there may be times when it would be appropriate for public bodies to comment as part of the formal consultation process, which would generally not be the case for Government Departments. This would mean that their views would be made publicly available and treated as distinct from those of the Government. That may be appropriate with office holders, for example, and with Non-Departmental Public Bodies, and the Government envisages proceeding on a case-by-case basis.
- 4.34 The Cabinet Office will draw these points to the attention of Departments in the draft guidance manual on order-making.

Electronic Communication

- 4.35 The Government notes that its dealings with the Committees are increasingly conducted electronically—this is the case with e-mail notifications, with the Committee’s subsequent requests for further information and the Department’s responses to them. This is to be welcomed.
- 4.36 The Government also maintains the Cabinet Office website as the main public source of information on the Act, orders made under it, proposals currently before Parliament for scrutiny and consultation exercises on proposals. It records the entire history of each proposal. The Government considers that there should continue to be a single focal point on the web for regulatory reform order-making, and agrees with the Committee in its 8th Report that:²⁸
- “...websites may well be an effective means of contacting potential respondents, and a practice to be encouraged”.
- 4.37 In passing, the Government notes that the only transactions that are exclusively paper-based take place at the start of the two formal pre-legislative stages when the Parliamentary Branch in the Cabinet Office delivers large numbers of hard copies of the documentation. The Government looks forward to the day when that function can also be effected electronically as it would produce efficiency gains.

Role of Cabinet Office

- 4.38 The Cabinet Office has overall responsibility within Government for the Regulatory Reform Act, while policy Departments are responsible for implementing it through the proposals that they bring forward.
- 4.39 At present, the Cabinet Office lays proposals at both stages on behalf of policy Departments given that the super-affirmative procedure is still novel. It provides a central source of advice for Departments on order-making, through advice on particular proposals, through seminars and guidance material. It also provides a public access point through its website to consultation exercises, orders as made and other information on the Act. It helps manage the flow of proposals through to the Committees, and in doing so it seeks to promote the use of the order-making power throughout Government.

²⁸ HoC 691 <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/691/69102.htm>

- 4.40 The Government considers that, as the order-making process beds in, precedents will be established and the process will become smoother as stakeholders will be familiar with what is involved. The Government considers that it will therefore be right for the Cabinet Office to reduce its role gradually to one of monitoring and oversight.

The effect of the two-year exclusion in section 1(4)

- 4.41 In their 1st report on their initial scrutiny of the Special Occasions order, the Commons Committee raised concerns as to the application of the 2-year exclusion in section 1(4):

“We are satisfied, therefore, that on this occasion, it is appropriate to proceed as Treasury Counsel has suggested. Although clearly designed to circumvent the restriction in s1(4), in our view this means of drafting does not, in these circumstances, offend against the spirit of the Regulatory Reform Act. We give notice, however, that if, on a future occasion, a regulatory reform proposal was drafted in such a manner without the reasons being clear and the policy aims spelt out, both to Parliament and to consultees, we would regard it as an abuse of the power contained in the 2001 Act”.

- 4.42 And, in their 2nd report after their final scrutiny of that proposal, the Committee concluded that:

“6. More substantially, the Government has amended the draft Order so as to meet our concerns, which were also expressed by the Lords Committee, that the proposal might prejudice the making of further regulatory reform orders relating to the relaxation of licencing hours on certain future dates. As recommended by Treasury Counsel, the draft Order would transfer the restrictions currently applying to the sale of alcohol on all New Years’ Eves and during the Golden Jubilee from Part III of the Licensing Act 1964 into this Order. In our Report on the original proposal, we suggested that an order redrafted in this way would be likely to meet our concerns without offending against the provisions of the Regulatory Reform Act 2001; but indicated that it would not be until we saw a draft of the Order as it would eventually be made that we would be able to satisfy ourselves that it would do so. We are now satisfied that this draft Order does so, and we have no further comments to make on the drafting of the Order. However, we recommend that the Cabinet Office take note of this episode, and issue guidance to Departments to ensure future orders do not fall foul, or risk causing subsequent orders to fall foul, of section 1(4) of the 2001 Act.”

- 4.43 The Government regards the use of regulatory reform order-making for one-off purposes as a special case given that the power was framed with everyday regulatory regimes in mind. It also notes that the solution in this instance involved a much more comprehensive approach to the legislative reform, involving the restatement of large parts of the Licensing Act but in relation only to the licensing of special occasions. The Government will encourage Departments to adopt similarly inventive solutions, should this sort of difficulty arise again.

- 4.44 That said, the Government accepts that any disapplication of section 1(4) would need to be in relation to clear policy aims. It agrees that, where practicable, this should be addressed in the RRO consultation document (but see paragraph 4.46 below).

- 4.45 The Government accepts the need to provide guidance to Departments on the effect of the two-year rule in section 1(4), and will cover the Committee’s points in the

draft guidance it has prepared for Departments on regulatory reform order-making. As mentioned in its previous Memorandum, the Government intends publishing this guidance more widely once the regulatory reform order-making procedure has established itself. It considers that future proposals for disapplication would be suitable subjects for the informal ‘without prejudice’ advice mechanism.

- 4.46 Leaving to one side the particular problem of RROs in relation to annual events, the two-year exclusion is proving to be much more of an obstacle than we had envisaged. One way around would be for related Bills to disapply section 1(4) in particular cases, and that approach is being tested in relation to the ‘power to innovate’ in the current Education Bill.²⁹ The Government notes the comment in the DPRRC’s 14th Report³⁰ on this particular issue:

“CLAUSE 2(8)

3. Clause 2 allows the Secretary of State by order to make provision for modification, exemption or relaxation of specific aspects of the education legislation for pilot projects and experiments. Examples of the sort of pilot schemes which might be considered under this clause include experiments with the “continental” school day, or using a small part of a school’s budget for community purposes (Government memorandum, paragraph 29). The lifetime of the power is limited, to four years, after which the lessons learnt will be evaluated. The duration of any particular order is limited to three years in the first instance.

4. Clause 2(8) provides that the effect of a temporary order under the new powers described above may be disregarded for the purposes of Section 1(4)(b) of the Regulatory Reform Act 2001. That section prevents the amendment, repeal or replacement of primary legislation through Regulatory Reform Orders within two years of substantive amendment of the relevant provision.

5. The effect of clause 2(8) is that the Government could put in place a temporary scheme, and subsequently use the Regulatory Reform Act procedure to prolong it, or make it permanent, within two years. Without this provision, the Government would have no option but to proceed by way of primary legislation.

6. The Committee suggest that the House may wish to explore with the Minister the possible uses to which this derogation from the Regulatory Reform Act 2001 may be put. Whatever the justification for the use of this derogation on this particular occasion, we will consider future uses on their merits, and we would not envisage that such derogations should be a regular feature of legislation.”

- 4.47 The Government considers that disapplication is only appropriate in special circumstances—for example, the justification in this instance is that the “power to innovate”:

- acts as a pilot for the follow-on RRO which would otherwise not be able to be done for 2 years; and
- is subject to the safeguard of a sunset clause.

- 4.48 Any proposal for disapplication will, of course, require careful co-ordination in order to ensure that the disapplication is framed appropriately. The Government considers, though, that disapplication may prove attractive in drawing a “bright line” in related Bills around the subject-matter of a proposed RRO so that there was

²⁹ <http://www.publications.parliament.uk/pa/ld200102/ldbills/051/2002051a.pdf>

³⁰ HoL91, <http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldselect/lddclreg/91/9102.htm>

no doubt on that count that the RRO could proceed. This may prove to be particularly the case with the larger reforms such as reform of the Civil Registration Service or of fire safety legislation. In such cases, we envisage that the Government would write to the Committees explaining to them the reasons for the disapplication, which would also be rehearsed in the Explanatory Notes for the Bill.

The Future

- 4.49 The Government does not have any monopoly on ideas for suitable reforms. Over the years, we have encouraged business organisations and others to come forward with detailed and specific proposals for reforms. We would welcome views from the Committee as to more effective ways to stimulate suggestions for reforms. For example, given the relationships that MPs have with their constituents and with representative bodies, including trades unions, businesses, local authority groupings, charities and other interest groups, there may be scope to involve MPs fruitfully in the generation of suggestions.
- 4.50 While Private Members Bills offer a useful way to effect change, RROs are not subject to the same timetabling constraints and are potentially a more certain method, provided of course that the safeguards are met. Where an MP considers that there may be scope for reform and that it would be suitable for an RRO, he or she could act as a catalyst, gathering the initial evidence and lobbying the responsible Minister for action. While the MP would act as sponsor, it would, of course, remain for the Minister to consult formally, to draft the instrument and explanatory material and to table them for pre-legislative scrutiny. This approach may produce worthwhile proposals, and the Government would be interested in the views of both Committees as to its practicability and whether there might be better alternatives.
- 4.51 The Government also takes particular note from the Committee's 6th Report of this Session of the fact that the Select Committee on Transport, Local Government and the Regions³¹ has suggested there may be scope for an RRO to address the current inability of local authorities to use personal data held on council tax registers to identify the owners of empty homes.
- 4.52 This is a very helpful development—and the Government would want to support the Committee whole-heartedly in encouraging other Select Committees to consider the scope in their enquiries for recommending the use of RROs in order to remove unnecessary and inappropriate burdens from people in the everyday conduct of their affairs. DTLR are now investigating this proposal in more detail, and will inform the Committees of their conclusions as to the feasibility of using an RRO to deliver this particular reform.

Conclusion

- 4.53 The Government considers that the regulatory reform order-making power is beginning to prove its mettle as an effective alternative to primary legislation, but that there is scope for speeding up the flow of order-making.
- 4.54 The Government values its open and constructive relationship with both Committees and wants to work with them to deliver real benefits to those affected by over-complex, over-lapping and over-burdensome legislation.

³¹ <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdereg/663/66309.htm>

ANNEX A: ANALYSIS OF PROPOSALS FOR RROs

There are 31 new proposals, where implementation by RRO is either a commitment or an alternative, as follows:

	RRAP Item	Title	Dept
1.	1.1	Alcohol licensing: HM The Queen's Golden Jubilee	DCMS
2.	1.15	Offshore windfarms: easing the consents procedure	DTI / DEFRA
3.	1.42	Agriculture: sugar beet research programme	DEFRA
4.	1.47	Building regulations—self-certification by competent enterprises	DTLR
5.	1.56	Credit Unions—removal/reduction of certain operational restrictions	HMT
6.	1.100	Legal instruments (formalities)	LCD
7.	1.123	Radio Spectrum Trading	DTI
8.	1.147	Taxi/private hire vehicle regulation	DTLR
9.	1.153	Vehicles: car checking companies—providing information	DTLR
10.	1.154	Vehicles: cherished number transfers	DTLR
11.	1.164	Welsh Sunday opening polls	DCMS
12.	1.165	Wildlife: dangerous wild animals	DEFRA
13.	2.1	Cancer cures: advertisements	DoH
14.	2.7	Public health: a new national agency for infection control and health protection	DoH
15.	2.8	Public statues	DCMS
16.	2.9	Schools: free school meals	DWP
17.	2.14	Consumers Committee for GB and Committee of investigation for GB	DEFRA
18.	2.19	English Heritage: overseas trading functions and underwater archaeology	DCMS
19.	2.28	Housing standards: repeal of “minded to” notices	DTLR
20.	2.35	Local authorities: annual reports to tenants	DTLR
21.	2.38	Museums and galleries: a series of reforms to remove regulatory burdens	DCMS
22.	2.41	Royal Botanic Gardens, Kew	DEFRA
23.	3.1	Civil justice reforms	LCD
24.	3.3	Damages: periodical payments	LCD
25.	3.4	Driving: removal of the requirement to surrender a driving licence when changing personal details	DTLR
26.	3.8	Administration orders for personal insolvency	LCD

27.	3.13	Driving: acceptance of EC/EEA driving licences originating in a designated country	DTLR
28.	3.14	Driving: acceptance of non-designated driving licences originating in a designated country	DTLR
29.	3.15	Driving disqualifications and penalties—mutual recognition between GB and NI	DTLR
30.	3.21	Health: compensation for work-related dust-based illnesses	DTLR/HSE
31.	3.26	Maritime employment disputes	DTLR

The 32 RRO proposals from the original list of 51 that have been carried forward into the Regulatory Reform Action Plan are as follows

	RRAP Item	Title	Dept
1.	1.6	Business tenancies legislation—procedural reforms	DTLR
2.	1.7	Charities: reducing the burdens	HO
3.	1.9	Corporate dentistry	DoH
4.	1.10	Fire safety legislation reform	DTLR
5.	1.12	Gaming machines regulation	DCMS
6.	1.16	Patents law improvements	DTI
7.	1.20	Weight and measures: simplification	DTI
8.	1.48	Building regulations: Approved Documents	DTLR
9.	1.49	Charities: removal of the dual accounting burden on NHS charities	DoH
10.	1.54	Copyright law clarification	DTI
11.	1.58	Directory publications	DTI
12.	1.69	Environment Agency: legislative review	DEFRA
13.	1.87	Health and safety—HSE access to agricultural data	DTLR
14.	1.94	Housing: Private sector housing renewal	DTLR
15.	1.102	Local Authorities Business leaseholds	DTLR
16.	1.107	Medicines licensing	DoH
17.	1.114	Partnerships: abolition of the 20 partner limit	DTI
18.	1.125	Road traffic regulation review	DTLR
19.	1.130	Solicitor's professional regulation	LCD
20.	1.149	Third Parties—rights against insurers	DTI
21.	1.149	Trading Stamps: repealing the Trading Stamps Act	DTI
22.	1.157	Vehicles: mandatory mileage recording	DTLR
23.	2.23	Home Grown Cereals Authority	DEFRA

24.	2.30	Local authorities consent regimes	DTLR
25.	2.48	School funding: simplifying arrangements for premises work at voluntary aided schools	DfES
26.	3.2	Civil Registration Service: modernisation	HMT/ONS
27.	3.6	People with disabilities: vaccine damage	DWP
28.	3.17	E-business: electronic links to Benefits Agency	DTLR
29.	3.18	E-business: electronic links to UK Passport Service (UKPS)	DTLR
30.	3.34	People with disabilities: Invalid Care Allowance	DWP
31.	3.36	Sexual offences: access to victim material	HO
32.	3.38	Tree Preservation Order system	DTLR

ANNEX B:RRO PROPOSALS FROM THE LIST OF 51 THAT DO NOT APPEAR IN THE REGULATORY REFORM ACTION PLAN

	Title	Dept	Reason
1.	Unfair contract terms	DTI	Currently with Law Commission due to report in Summer 2002—looking at prospects for RRO
2.	Meat and livestock Commission	DEFRA	dropped as the new Chairman's vision of the MLC does not include the type of cross commodity activity carried out by EFSIS
3.	Bootleggers	HMT/C&E	Given the downturn in use of rental vehicles due to the general reduction in cross channel detections, there would be a disproportionate effort in attempting to use an RRO with measuring improvement a difficult task. For now we have no plans to use an RRO in this area.
4.	Disposal of land at less than best consideration	DTLR	Decision taken to proceed by new General Consent administrative reform to remove need for consent in all but the largest cases
5.	Caravan site licensing	DTLR	DTLR are in discussions with DEFRA on taking this forward
6.	Communicable disease	DoH	Addressed in part by item 2.7 in RRAP
7.	Attachment of Earnings	LCD	Considering possible inclusion in a Civil Justice Reform Bill subject to available Parliamentary time
8.	Special Occasions Licensing	DCMS	Already made
9.	Housing Transfers	DTLR	Dereg Order not RRO but in RRAP (now made)
10.	Bingo	DCMS	Dereg Order not RRO but in RRAP (now made)

11.	Restaurant licensing hours	DCMS	Dereg Order not RRO but in RRAP (now made)
12.	Births and Deaths	ONS	Dereg Order not RRO but in RRAP (now made)
13.	After-hours childcare	DfES	Education Bill
14.	NIC—third party awards to employees	HMT	Administrative changes decided upon instead
15.	Rehabilitation of Offenders	HO	Regulatory rather than deregulatory
16.	Legal Services Ombudsman	LCD	LC no longer wishes the change to be made
17.	Births and Deaths—Wales	ONS/HMT	Now part of the Civil Registration RRO
18.	Vexatious Litigants	LCD	Court case proved power already exists
19.	Street Trading	DTI	Regulatory rather than deregulatory
20.	Approving a LEA's curriculum complaints procedures	DfES	Education Bill

ANNEX C: REGULATORY REFORM ORDERS, including final tranche deregulation orders

ORDERS MADE

Order title	Consult period	Laid for initial scrutiny	Cttee reports:	Laid for final scrutiny	Cttee reports	Parly Debates	Made on
1. Special Occasions DCMS	19 Mar 2001— 11 June 2001	28 June 2001	24 Oct 2001 (L) 6 Nov 2001 (C)	15 Nov 2001	21 Nov 2001 (L) (C)	6 Dec 2001 (L) 28 Nov 2001 (C)	6 Dec 2001
2. Housing transfers (dereg order) DTLR	24 Aug 1999— 15 Oct 1999	31 Jan 2001	7 Mar 2001 (L) 13 Mar 2001 (C)	28 Nov 2001	3 Dec 2001 (L) 11 Dec 2001 (C)	19 Dec 2001 (C) 17 Jan 2002 (L)	19 Feb 2002
3. Bingo (dereg order) DCMS	early Nov 2000— 16 Feb 2001	26 March 2001	1 May 2001 (C) 9 May 2001 (L)	27 Jan 2002	5 Feb 2002 (C) 6 Feb 2002 (L)	13 Feb 2002 (C) 28 Feb 2002 (L)	1 Mar 2002
4. Restaurant licensing hours (dereg order) DCMS	28 Oct 1999— 28 Jan 2000	26 April 2001	1 May 2001 (C) 9 May 2001 (L)	24 Jan 2002	5 Mar 2002 (C) 6 Mar 2002 (L)	13 Feb 2002 (C) 28 Feb 2002 (L)	5 Mar 2002
5. Voluntary aided schools DFES	8 May 2001— 10 Aug 2001	20 Nov 2001	23 Jan 2002 (L) 29 Jan 2002 (C)	25 Feb 2002	5 Mar 2002 (C) 6 Mar 2002 (L)	12 Mar 2002 (C) 27 Mar 2002 (L)	27 Mar 2002
6. Golden Jubilee Licensing DCMS	19 Mar 2001— 11 June 2001	20 Nov 2001	23 Jan 2002 (L) 5 Feb 2002 (C)	26 Feb 2002	5 Mar 2002 (C) 6 Mar 2002 (L)	18 Mar 2002 (C) 27 Mar 2002 (L)	28 Mar 2002
7. Births and Deaths (dereg order) ONS	23 Mar 1998— 7 May 1999	26 March 2001	1 May 2001 (C) 2 May 2001 (L)	11 Jan 2002	19 Mar 2002 (C) 20 Mar 2002 (L)	23 Apr 2002 (C) TBA (L)	N/A

Note: (1) Potential for delay in arranging for motion to approve in House of Lords, given need for debate.

(2) Where both Committees report, the calculation for the period takes as the start point the date of the last Committee reports. The same holds where the start point is debate on the Floor of the House.

CURRENTLY AT STAGE 2

	Order title	Condoc issued:	Consult period ended:	Laid for initial scrutiny	Committee reports:	Laid for final scrutiny	Committee reports
1.	Renewal of private sector housing DTLR	19 Mar 2001	29 June 2001	13 Dec 2001	28 Feb 2002 (C) 6 Mar 2002 (L)	17 April 2002	(C) 24 Apr 02 (L)
2.	Invalid Care Allowance DWP	23 July 2001	15 Oct 2001	17 Dec 2001	6 Mar 2002 (L) 12 Mar 2002 (C)	22 April 2002	(C) 24 Apr 02 (L)
3.	Vaccine Damage Payments DWP	23 July 2001	15 Oct 2001	14 Jan 2002	6 Mar 2002 (L) 19 Mar 2002 (C)	29 April 2002	(C) (L)

(Note: the Committees have to report by or before the end of 15 sitting days after the draft order was laid for final scrutiny)

CURRENTLY AT STAGE 1

	Order title	Condoc issued:	Consult period ended:	Laid for initial scrutiny	Committee reports:	60 day period ends:
1.	20 Partner Limit	4 April 2002	4 July 2002	7 May 2002	(L) (C)	

(Note: the Committees have to report by the end of 60 calendar days, not including any breaks longer than 4 days, after the proposal was laid for initial scrutiny)

CONSULTATIONS

	Order title	Dept	Consultation document issued:	Consultation period end:
1.	Births and Deaths	ONS	23 Mar 1998	7 May 1999
2.	Housing transfers (dereg order)	DTLR	24 Aug 1999	15 Oct 1999
3.	Restaurant licensing hours	DCMS	28 Oct 1999	28 Jan 2000
4.	Gaming machines	DCMS	19 March 2001	15 June 2001
5.	Bingo (dereg order)	DCMS	4 Nov 2000	16 Feb 2001
6.	Business tenancies	DTLR	19 March 2001	30 June 2001
7.	Golden Jubilee Licensing	DCMS	19 March 2001	11 June 2001
8.	Landlord and Tenants Act	DTLR	19 March 2001	30 June 2001
9.	Renewal of private sector housing	DTLR	19 March 2001	29 June 2001
10.	Special Occasions	DCMS	19 March 2001	11 June 2001
11.	Abolition of the 20 partner limit	DTI	4 April 2001	4 July 2001
12.	Voluntary aided schools	DfES	8 May 2001	10 Aug 2001
13.	Invalid Care Allowance	DWP	23 July 2001	15 Oct 2001
14.	Vaccine Damage Payments	DWP	23 July 2001	15 Oct 2001
15.	Credit Unions	HMT	16 Oct 2001	18 Jan 2002

MINUTES OF EVIDENCE

TAKEN BEFORE THE REGULATORY REFORM COMMITTEE

TUESDAY 2 JULY 2002

Members present:

Mr Peter Pike, Chairman

Brian Cotter
Mr Dai Havard
Mr Mark Lazarowicz
Mr Andrew Love
Chris Mole

Mr Denis Murphy
Dr Doug Naysmith
Mr Anthony Steen
Brian White

Examination of Witnesses

RT HON LORD MACDONALD OF TRADESTON, a Member of the House of Lords, Minister for Regulatory Reform, Cabinet Office; MR NICK MONTAGUE, Regulatory Reform Team, Regulatory Impact Unit, Cabinet Office; RT HON JOHN SPELLAR, a Member of the House, Minister of State, Department for Transport; and MR NIGEL CAMPBELL, Office of the Deputy Prime Minister and Department for Transport, examined.

Chairman

1. Can I welcome you to the Committee. Perhaps you could introduce your team and make a few brief comments to open the session.

(Lord Macdonald of Tradeston) I am Minister for the Cabinet Office, and I have with me Nicholas Montague, who leads the Regulatory Reform team at the Regulatory Impact Unit, which is part of the Cabinet Office. We have too Nigel Campbell, who was at DTLR but is at present amongst other things leading the departmental regulatory impact unit both for the Department for Transport and the Office of the Deputy Prime Minister. I am hoping to be joined by the Minister of State for Transport. From my previous incarnation, it gives me great pleasure to say that the Minister of State for Transport is caught in the traffic. He will be here shortly, and I am very pleased that he can join me because at the DTLR he and Lord Falconer played a very significant role in driving forward the whole agenda much harder there than perhaps in any other ministry. I would like to take up your invitation to introduce some of the issues. I should start by saying that we value very highly the constructive and very open relationship that the Government have enjoyed with you and your Committee. It has allowed us to discuss issues and cases and emerging problems in a very constructive fashion. I should say right from the start that I very much regret the article that appeared in the press which had little regard for the facts of the case or the views of those involved. I wrote to you on that, Mr Chairman, and I am sure that we have put that behind us, but let me just re-assert that it certainly did not reflect the government's considered views. The relations between the government and the Committee are on the whole very successful. We do not agree on absolutely everything but we are nonetheless working to improve the statute book. We have been removing unnecessary burdens on business, on people, on charities, on the wider public sector. A key feature of this has been our willingness to engage constructively on the issues, and I think

that is witnessed by the Committee's Fourth Report and its First Special Report and our memoranda in response to these. I am sure you will agree that through these we have managed to narrow down any outstanding issues of concern and for the most part we have agreed on how to handle them. I think it is safe to say that we have now reached a common understanding on most RRO-related issues, and that is very much for the good. As you know, the Government has also made good use of the Committee's very helpful offer to give without-prejudice advice before the formal scrutiny stages on particular issues relating to the use of the RRO procedure. As the memorandum shows, this has been helpful and I understand that the Office of the Deputy Prime Minister has recently discussed informally ways in which they might expedite four new but time-critical proposals, and we have also reached an understanding on the issue of appropriateness, agreeing that it is essentially self-policing. To help all concerned to plan their workloads better, the Government has fulfilled the Committee's request for a monthly forward look at our activity and we will continue to do so. We have expressed some concerns about the potential capacity of the Committee to handle this—and I stress it is the potential peak workload that we envisage. At present the Committee do not have a full workload and that is very much down to us and to the departments, and we are doing all that we can to encourage the departments to come forward with proposals, Mr Chairman. We want to look creatively for ways around any real or potential blockages. After all, the Committee's predecessor handled a peak of 26 deregulation orders in the second year after enactment of the Deregulation and Contracting Out Act. We wanted to do better if possible and not to bump against a limit of 18 orders per annum. As we suggest in the memorandum, we would prefer to see a pragmatic effects based approach that would take account of the difficulty and complexity of proposals rather than any formal one-a-week rule, but I certainly do not want to dwell on that issue to

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[Continued

[Chairman Cont]

the exclusion of others. The Committee has expressed its view, as has the Government, and it may be that we will not make that much progress while it is still a potential problem and remains in the abstract, but I am confident that when the time comes, we will be able to work together to find ways round any problem in a sensible and mutually acceptable fashion. While the Government has been unable to give a commitment to allow a free vote in the event of disagreement between itself and the Committee on particular recommendations, I must emphasise 17 July 2002 that it is the Government's intention to do all it can to avoid any such disagreements. I do not envisage the Standing Order procedures being used on anything other than the most exceptional of cases, and I am very happy to repeat the Government's undertaking not to proceed with a draft order in the event of a hostile report. The Regulatory Reform Action Plan was a central initiative. It had very strong support from the Prime Minister and the Chancellor. The responsibility for implementation of course rests with the relevant policy departments, and that is the key; it is my job in liaison with Cabinet colleagues and the regulatory reform ministers to help ensure that departments do in fact deliver. We have a variety of mechanisms in place to check progress. We have the Better Regulation Task Force, which considers implementation; the Panel for Regulatory Accountability will check progress too; and the Prime Minister himself periodically pulls together the regulatory reform ministers from each Department to check progress. But there has been very little follow-up, I am sorry to say, from businesses large or small. We had one recent inquiry from a member of the Engineering Federation following a senior official level meeting about support for an item on company share buy-back legislation. We have put a web page up for suggestions, but again, there has been quite a low level of interest, just requests for copies really. Looking at the Regulatory Reform Action Plan, we see it as a success and we have an open mind as to whether there should be a second edition or a publication of some sort of follow-up, Mr Chairman.

2. Thank you. I welcome John Spellar, the Minister for Transport. Your opening comments, Minister, have been very good because you have touched on a number of important issues. Most of them will be touched on during this session. The thing I would like to emphasize is that this Committee would certainly wish to work together with the Government in ensuring that regulatory reform does proceed at a satisfactory pace. It is now over a year since the General Election and the Act under which we are now completely working was passed before the General Election. Are you satisfied with progress so far in bringing forward proposals and publishing consultation papers?

(*Lord Macdonald of Tradeston*) We have made steady progress, Mr Chairman, but it could be better. There are five RROs made, one to be shortly, one under scrutiny, one consultation finished and three under way with eight more to go before recess. There is certainly no blockage at present with the Committee. As I said earlier, the workload is currently low. It is very much down to the departments to come forward with more and better

RRO proposals, and there has been some slippage there, and I think that is probably inevitable given that the RRO process is a demanding one, where all the policy loose ends have to be tied up and then justified in the light of the tests of the 2001 Act. So there is quite a way to go but the burden of work for us is inside the departments.

3. On the items where there has been consultation, there seem to be some items where consultation was now some time ago, yet we have not seen any proposals. I know there are two shown in the Forward Looks expected very soon with regard to business tenancies and credit unions but on gaming machines, method of payment, and Landlord and Tenants Act, where in both cases the consultation ended in June last year, we have not yet seen any proposal forthcoming. Are we to expect proposals as a result of the consultation, or have the ideas now been dropped?

(*Lord Macdonald of Tradeston*) Mr Montague would probably be able to give you better detail on the individual proposals, but what I should say is that it has become very clear to departments that the RROs are not a quick fix in any way. They can be used to deliver reform fairly quickly in the context of perhaps waiting in a very long queue for primary legislation. They are more streamlined routes than bills, but the legal and procedural requirements are heavy, they are front-loaded and indeed, it has become clear to departments that an RRO often requires broadly the same order of resources as would be needed if the proposal were to be implemented by a bill. So we are finding right across departments that there have been capacity constraints, particularly in the legal areas, and I know that my colleague Mr Spellar has given particular attention to this in his Department and through his efforts has been most successful in trying to align its resources and expertise with the needs of this new route.

(*Mr Campbell*) Can I speak to the Landlord and Tenants Act? There is a policy issue and a capacity issue here. The capacity issue is that the same people are doing both the reform of section 57 of the Landlord and Tenants Act and the Business Tenancies. The Business Tenancies was regarded as a better runner, for reasons I will explain in a moment, and took priority. That is the first reason.

Brian White

4. So you have not organised your workload properly?

(*Mr Campbell*) It is the same people responsible for both reforms. The second reason was the policy reason, which is that there have been two consultations, one by the Government and one by the National Assembly for Wales, and it is fair to say that they did not receive rapturous responses and therefore people are considering the correct way to proceed. So the policy issues may mean it comes back in a different form. That is the second reason why there has been a delay.

(*Mr Montague*) None of the proposals that have been consulted on will be dropped. I understand that we are aiming to lay in about a fortnight's time the proposed RRO on credit unions and shortly

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[Continued

[Brian White Cont]

afterwards, we hope, on business tenancies. As you know, DCMS have just recently finished consulting on the RRO for relaxing licensing laws for all future New Year's Eves, and they again hope to be in a position to lay that one very shortly, certainly before the end of this session, before the recess. On DCMS's proposals for a gaming machines RRO, I checked yesterday with the officials, and that one is likely to slip through to just after the recess. The reason there is work going ahead on the Budd Report.

(*Mr Spellar*) Certainly this new procedure took some time for officials of the departments to get up to speed on, and there has been a move, and one which the management board at the old Department, but reinforced by the new Department, of ensuring that this work has priority. There has been a danger of officials being diverted off on to other work. In some cases that was fully understandable, for example, on some traffic work dealing with the problems of the Jubilee, but beyond that, we do need to ensure that there is that flow of work through. I do have regular meetings with the individuals who are responsible for regulatory reform precisely in order to track where the bottlenecks are, and as we deal with the administrative ones, I am absolutely certain that we will be coming up against bottlenecks on the legal side, which is the next body of work which we are going to have to handle, but you may want to deal with that later.

Chairman

5. Is not the advantage to the various departments that whilst I would accept that the same amount of work and resources, and indeed we would hope equal scrutiny is carried out, that this process does provide departments with a second opportunity, where they do not necessarily have to have a bill? We all know that the Queen's Speech must be being prepared now for the next session of parliament and that ministers will be bidding for slots within that programme of legislation, and this does give the opportunity, if a bill is not there, to be able on a second channel to get something that is seen as a benefit.

(*Mr Spellar*) Very much so. It is not only that a bill may not be there in the next session of parliament, but there will be an indeterminate amount of time before a slot may become available, and therefore there may be issues which are important to departments, and indeed for the groups that they are dealing with, but which are never of sufficiently high order to merit priority and which are always therefore liable to fall back in the queue. The RROs, precisely as you say, Chairman, are a mechanism for dealing with these pressing matters. That then leads to the need to focus and get a proper critical path. That is incumbent on all parts of the process, at this end but also at our end.

Mr Steen

6. This really is a question for Lord Macdonald but for John Spellar as well. Having been critical of the last administration on deregulation, and being somewhat equally critical of this administration on deregulation, would you agree with me that the problem is not the intention or the bona fides of

government to deregulate, but the very machinery of parliament, which is dedicated to passing new legislation? The problem of parliament is that it is passing legislation the whole time, and good intentions cannot defy—rather like King Canute—the power of parliament in passing new laws the whole time. Would you agree that the problem could only be dealt with by not deregulation but by putting in sunset clauses into new legislation, or finding a machinery whereby you only pass a new law if you actually take one off the statute book? Otherwise, it is bound to lose, because parliament is bigger than a small unit which is trying to stop the course of the waves and pushing forward new legislation.

(*Lord Macdonald of Tradeston*) Obviously I would not look for any solution which was overly bureaucratic in the sense of insisting on sunset clauses where they were inappropriate. I do accept that every administration is sincere and committed to this. When I was in business before coming into politics I remember Michael Heseltine summoning us in and it was quite clear that his intentions and those of the Government were very sincere. I should stress that there is a very powerful commitment from the top to try and stop over-regulation and to clear out bad regulation, and the combined effort which I described earlier that we are involved in I hope will aid that process. For instance, the regulatory impact assessment procedures are now built into every Department through special units and through ministers who are responsible for them, and indeed, all legislation must now go through that filter. The way we have conducted our business in this country is now seen as a model for the rest of Europe, and we have been pressing the EC to try to take action to refine the legislation coming out of Europe, and we have had some success in that recently, and we are seen as one of the leaders in that field. So in general, yes, I accept that this is in one sense a great factory for creating laws, and therefore if you have a product going through your factory, you had better make sure you have the key workers in at every stage to handle the products going through. It may be that there are bottlenecks, particularly in the legal areas, with the parliamentary counsel or the legal support inside departments and those are the kind of issues that my friend Mr Spellar was referring to.

Chairman

7. Can I move on to the Action Plan and the things that you have listed in the Action Plan. Do you have any idea how many more potential proposals you intend to add to that list? Are you reasonably confident when things are added to the list over the next three years that these proposals will be translated into Regulatory Reform Orders?

(*Lord Macdonald of Tradeston*) Mr Montague has mentioned a few of the issues that are coming up. We believe that we have got the credit unions due to be laid very shortly. The draft statutory instrument is with the parliamentary counsel for checking, after which it should be laid for scrutiny. We have the business tenancies procedural reform, which needs further limited consultation.

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[Continued

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8. I am sorry to cut across you, but I am more interested in things that are not on the list now. Do you have anything you are looking at which you think might go on to the published list?

(*Lord Macdonald of Tradeston*) Yes, indeed. I think that has been particularly true in the area of the DTLR. They have been very busy in that way, but we believe that we will have perhaps 30 RROs that come out of the regulatory reform Action Plan scheduled for completion in 2003, and there are four recent new entrants from what is now the Office of the Deputy Prime Minister on housing, delegated management; housing tenure; rent increases for assured periodic tenancies; local government finance, forms of return; and housing cash incentive schemes. So obviously in the coming year we see great growth in the volume.

Mr Lazarowicz

9. I was interested in the comments from Lord Macdonald and Mr Spellar, both pointing to the difficulties in the departments in perhaps getting people to realise the opportunities of the RROs. I wonder if you can tell us a bit more about what the Cabinet Office has been doing to encourage the departments to make use of the regulatory Reform Order procedure.

(*Lord Macdonald of Tradeston*) As I say, we have been trying to lead through the regulatory impact unit in explaining to departments the opportunities that are available here. I think in the end the best advertisement for the new process is the number of successful orders that are made. There is no doubt at all that as the word has gone out around departments there has been a shift in mind-set, with departments previously of course often rather fixated on the need for that contest for legislation in the Queen's Speech but now beginning to see that there is another avenue opening up here. Through the Regulatory Impact Unit and Mr Montague's hard work in that field, we have got round the departments. We have now got departmental regulatory impact units that we can talk to directly about any problems in their areas. We have regulatory reform ministers now called together periodically by the Prime Minister, who again we can go to if we feel there is any problem or tardiness in a departmental response. We also have a Cabinet Committee which I chair and on which the Treasury and other ministers are represented, and again, we have tried to highlight the importance and the opportunities afforded by RROs. So it is building up. I would not personally be too disconsolate about the performance of the first year. We are a bit ahead of where we would have been in 1995 in the number of deregulation orders, and I would look to next year carrying that trend forward.

Mr Love

10. Recently I met representatives of my local Chamber of Commerce, and almost the first subject that came up for discussion was regulation, so I mentioned the plan, the 64 possible regulatory reform Orders, and this was pooh-poohed by them. My response to them was, "If these are not what you are looking for, what would you like to see in the form of deregulation?" and they did not have any

idea. I noticed, Lord Macdonald, that you commented on the almighty silence from business in relation to what sort of issues they would like to see regulatory reform on. Have we thought about trying to more formalise those procedures to try to draw business in to see whether we can get a useful dialogue to lead to the sorts of things that they would like to see deregulated?

(*Mr Spellar*) We are doing that, and it also needs them to shift their internal focus in order to be able to undertake that. Like you, with the road hauliers who I meet both locally and nationally, there is a regular grievance from them regarding regulation, and I put it very clearly back to them to point out the regulations they think are particularly onerous with minimal or marginal benefit to either other members of the public or the environment or whatever, that we would examine that and see whether a Regulatory Reform Order would be the appropriate mechanism for dealing with these differences. In some cases you do not actually have to go that far; it is about administrative implementation of existing legislation. To be fair to them, a lot of businesses have got into the mind-set of just generally complaining about red tape and bureaucracy. I think this is quite a salutary and useful exercise. I do think in a number of areas that they are right, that there are areas of excessive regulation, certainly compared with those businesses that operate in any international environment, and certainly compared with their international competitors. But I think this is going to be a useful exercise, not only for our departments, but also for business in terms of focussing on what their grievance really is and also on suggested mechanisms for improving that. They are working their way slowly through that, but I think they will get to that position and actually give assistance to us in this process.

Brian Cotter

11. If we keep on the business area, I would like to ask Lord Macdonald whether the Department of Trade & Industry are being encouraged to lead in looking at business areas which need to be addressed. I agree that when you go to business organisations, as Mr Love said, you find that you often do not get much in the way of feedback from them in terms of tangible examples. There was a notable occasion on the floor of the House just recently when a Member of the Conservative Party spent 55 minutes talking about regulation and attacking the Government, but there was precious little substance to it, and I am sure you have been looking at that speech carefully to see if there is any detail there. It is a further example of people who talk an awful lot on certain benches about regulation and have no solution to put forward. I hope the Government are looking, particularly Trade & Industry, to more tangibly addressing these issues.

(*Lord Macdonald of Tradeston*) Indeed, the Minister for Small Business, Nigel Griffiths, at the DTI, is a member of our Cabinet Committee, and we stay in very close touch with the small business service, whose Chairman is also on the same committee. I was pleased that the Regulatory Reform Action Plan was so well received by the CBI

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[Brian Cotter Cont]

and by other business groupings. I do not think they are in any doubt that the RROs can be a way forward. I have tried to encourage them further because we have had generally good relationships with them, by saying this is a very good opportunity for trade associations to go there and take their concerns, particularly to local MPs, if it is to do with local business concerns in any way, and work with the MPs so that the MPs can run these issues at ministers and try to get these adopted. It could be a very important alternative to Private Members' Bills in that way, and business has said that it understands that there is an opportunity there. As far as Mr Love's point about the Chambers of Commerce, I too was a little bit disappointed that their general approach seemed to be demanding very sweeping reforms of fundamental issues rather than looking at the particulars that might be addressed through the RROs, but I do not think that response has been true of the generality of business, and I do see a very important new role for business, its trade associations and for MPs in particular to use this route. I just have a feeling, seeing the way that the interest is growing inside departments as people become more aware of the opportunities, that there will indeed be an awakening of awareness and interest from business.

Brian White

12. One of the things that civil servants are criticised for is that they gold-plate regulations. When we have had them here before us we have asked civil servants what experience they have had of being on the receiving end of regulation, and they have said they had no such experience. What are you doing to provide training for people in the RRO framework? Do they have the experience of being on the receiving end so that they are not gold-plating the regulations, and what training are you giving to the people in the departments and in the Cabinet Office?

(*Lord Macdonald of Tradeston*) We are certainly committed to tackling what is seen as a problem of gold-plating. We want to ensure that departments do not add any unnecessary measures when, in particular, transposing EC legislation into UK domestic law. We have introduced a number of initiatives and pieces of guidance and we are ensuring that the objectives of any new European law are achieved in a way that is most beneficial to business and citizens. Where I would look to for the solution to the problem that you identify is through the greater emphasis that we have put in government in recent times on reform and delivery, and you will have seen that the new Cabinet Secretary, Sir Andrew Turnbull's remit did particularly focus on those areas. I would argue that better regulation is an essential part of good delivery, and plainly very important to the reform of public services in particular. We have set up teams inside the Regulatory Impact Unit both to deal with business and with the public sector and to work with people in the front line to let them begin to act increasingly as gate-keepers before any legislation goes through in regulatory impact assessments or indeed in a policy effect framework document that we are drawing up. Going back to your question about training, you will

find, I believe, in the new structures being set up by Andrew Turnbull much greater emphasis on training for the civil service on how to expedite delivery and reform, and that again by definition would include better regulation.

13. One of the criticisms that you often get is if people come up with ideas, it goes into the Civil Service black hole and disappears. One of your aims in the Plan is to open up other routes for sponsoring RROs. How exactly are you going about opening up those gateways?

(*Lord Macdonald of Tradeston*) At every opportunity, Mr Chairman, myself and fellow ministers with a particular interest try to remind our listeners in any speeches we are giving and to remind parliament of this opportunity. I know that in talking to MPs the response has generally been positive. I think there is still clearly an unfamiliarity with the work that we are all engaged in but I believe, as I said earlier, that once we see a body of very useful RROs stacking up with all the precedents attached to them, MPs, civil servants, ministers, people outside in business and in the public sector will begin to see this as a very promising new route to expedite change.

Mr Lazarowicz

14. You will be aware that there have been concerns expressed within the Government about the Committee's wish to have one order laid per week so as to ensure a regular flow of orders. I think that has certainly been an issue which the Government has had concerns about in the past. Is there still a concern within Government about the wish to have that regular timetabling, or is there perhaps now an acceptance that the Committee wants to see full use of the RRO procedure? It is just that we are concerned to have a regular flow rather than have a "feast and famine" of orders coming to us.

(*Lord Macdonald of Tradeston*) Indeed, Mr Chairman, Mr Lazarowicz puts it very astutely there. We are clear, and let me repeat, the Committee in no sense represents any kind of blockage. The fact that the work flow is low is down to departments, and we are doing what we can to stimulate that flow. Let me say that your reports are always on time, they have always been clear and they have always been helpful. Our concern is that if we get up to running at full speed, if one were to be formalistic about procedure, the maximum would be 18 orders made in any year, but as our memorandum pointed out, we may be looking at 40 RROs completed next year. That is therefore an area where we might look at the opportunities. I know that in the House of Lords, for instance, they have looked at refinements such as an interim report in the middle of the 60-day period and inviting people to come back on it.

Chairman

15. Can I interrupt you? It is this 18 a year limit. You mentioned it in your opening comments. We sit for 38 weeks a year, and as far as I see, what we are talking about was a potential for 38. We are not saying that there should only be one issue before us at a time, but it is a question of how many new ones are introduced a week.

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[Continued

[Chairman Cont]

(*Lord Macdonald of Tradeston*) It may be a very simple but fundamental problem of long division. What we have done is taken 36 weeks and decided that you would have to introduce each order twice, so we divided 36 by 2 and came up with 18.

Chairman: I understand the point, but in the second stage, in most cases, if the Government has responded in a positive way to what the Committee said, we do not see great difficulty with that. So in the main, I would think we are talking of new proposals. I cannot think of an instance when the second stage procedure has been difficult.

Mr Murphy

16. From a personal point of view, one of the frustrations of serving on this Committee is that we have for six or seven weeks at a time a very interesting opportunity to discuss and debate the issues in front of us. My concern also is for the amount of business, but also for the staff requirements. From the Member's point of view, we are very well served. We receive not just some of the complex orders, but also a very comprehensive briefing from the staff. So from our point of view it would be quite simple to deal with many more orders. My concern is whether we have sufficient staff to enable us to actually deal with those orders.

(*Lord Macdonald of Tradeston*) I know Mr Spellar has taken a particular interest in a much more hands-on fashion than I have been able to do. It might be useful for him to give his view on this, Chairman.

(*Mr Spellar*) I suppose my underlying concern would be that as both departments but also external bodies, as we were discussing earlier, start to realise the potential for RROs and that the work starts to come through—and I fully take on board your point of the need for government to try and get that into some orderly flow of work coming in to the Committee rather than, as was described, feast and famine. Once there is a wider understanding of the potential, it could well be—and I am already seeing greater interest within our Department in a number of possible orders on road haulage, shipping, driving standards and aviation just to name a few, and other departments are responding similarly—it would be unfortunate if we then had a procedural blockage. It would of course be attractive if we got there, because it would mean that we were using the procedure to its full potential—not that we perceive one at the moment, not that we do not understand the need to try and phase the work coming through, but at the same time, if departments collectively then become seized of the opportunities and start to put work through, that could provide a considerable volume of work for the Committee.

Mr Lazarowicz

17. That is a problem that should be addressed when we come to it. We appear to have doubled the capacity of the flow in the last few minutes.

(*Mr Spellar*) From the discussions that I understand have taken place with the Committee, it is showing a positive and flexible approach. I just would not want inflexibilities of procedure to

mitigate against what I hope will be the good work done between the Government and the Committee on this.

Chairman: I am reminded that the births and deaths proposal did at the second stage take time. To us, if we can see a problem with needing evidence and other sessions, then I am sure we can highlight that we have a problem, because at the end of the day, if we were having a number of proposals at first stage and a number at second stage which might need evidence, might need lot of work, that then becomes a problem. As you know, we have a system when it has been necessary to have two laid in a week, and I am sure that that type of discussion and liaison with this Committee will always receive a positive response. I hope that helps to clarify, and if it becomes impossible—not just for the Members but for those who service us—then we would have to point out that there is a problem.

Brian Cotter

18. We have been talking about throughput and timetabling, and these two points that I want to raise have an impact. Could the ministers confirm that they accept the reform of primary legislation should also receive parliamentary scrutiny at the required level? The Minister has been quoted as saying, "We must protect the rights of the legislature in the face of increasing efforts of all executives to diminish those rights." So we are talking about parliamentary scrutiny when required. Secondly, following on the points made by other colleagues, Mr Murphy in particular mentioned about staffing of the Committee and the need to get through the required number in the year, but also under the new procedure we are going to get possibly some more complicated proposals involving wider range of reforms which may need more specialised knowledge from the Committee or at least better presentation to us. I am not saying we have not had good presentations in the past, but good presentations of issues some Members may not necessarily have the expertise to address.

(*Mr Spellar*) Staffing of committees is surely a matter for the authorities of the House rather than for the Government and is covered by the overall finances of the House, and the block grant there. On the question of a broader issue, parliamentary legislation, I think you will have to ask the Leader of the House to come down to speak on behalf of the Government.

(*Lord Macdonald of Tradeston*) I always defer to my colleague.

Chairman

19. The recent report of the Modernisation Committee, which followed the Liaison Committee report of the last parliament, has addressed the need for additional resources for committees, and indeed, I have met the Chairman of the Liaison Committee, and whilst we do not see an immediate problem, I am sure if there were a problem, the House would address it within reasonable limitations. But as you rightly say, the resources with which we are provided are not a matter for the Government, but a matter for the House, and I am sure you would accept that.

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[Continued

[Chairman Cont]

(*Lord Macdonald of Tradeston*) If I may stress, Mr Chairman, this is something you have reported in the past, but this fact which takes so many people by surprise, and that includes ministerial colleagues, that the RRO is a new and more accessible track, but it is not a fast, easy track, which is I think what the anticipation had sometimes been. It is worth emphasizing that the RRO process sometimes needs more rigorous scrutiny at an earlier stage and therefore more resources than would primary legislation going through a Department. That is something that maybe Mr Campbell could emphasize on the difficulties of trying to handle some of these issues from the point of view of the DTLR, which as I said earlier, has been the exemplary Department for us to date.

(*Mr Campbell*) We have certainly found that. For a bill, you get a dedicated team of officials working on it, and you have a particular scrutiny process. For secondary legislation, it is regarded as part of your day job, and departmental lawyers rather than parliamentary counsel draft it. RROs feel like a mixture of the two. We have found with some of the more complex RROs, *de facto* we have had something that looked like a bill team, a dedicated resource. It did not always start out that way, but suddenly the amount of work needed was realised to be larger, and that is why that happened. The other difference between an RRO and primary legislation is that an RRO needs much more work up-front. So while the total is about the same, more work is needed before parliamentary scrutiny.

Chairman: It is the extra track that I referred to earlier. But if we are getting more efficient and better scrutiny of legislation, that is what we should all want. We should not want a quick track that misses problems that should have been seen en route.

Mr Steen

20. Reflecting my earlier comments, and in no way doubting the dedication and good will of your team and yourself, is there any way—and I am only asking this rhetorically, because I do not know if there is an answer—in which your unit can somehow get involved in primary legislation, to say, “Look, this clause is going to need to be repealed in the next X number of years and should not be included in the first place”? Most of your task seems to be in putting right primary legislation.

(*Lord Macdonald of Tradeston*) Indeed, and it is seen as a very important aspect of the earlier reforms that I mentioned in terms of delivery and the scrutiny of legislation going through. Again, to generalise, we know that the Civil Service has been very good at the business of creating policy. That has been its expertise, with perhaps less focus on the delivery of that policy. What we are beginning to see now, first under Sir Richard Wilson and now I believe increasingly under Sir Andrew Turnbull, is a demand that the Civil Service in the drafting of legislation begins to look at a policy delivery plan to try and take it through all the stages to ensure that it has the impact that the ministers have intended, and now we have a whole number—and I come from management but I still cannot speak the language very well—of tool kits created by the Civil Service,

the various measures that they put forward as filters and guidance for their staff, and you will find much more emphasis now on trying to work out the policy effect in terms of its delivery, in terms of the resources that it will demand, in terms of any perverse effects it might have. There seems to be much more scrutiny going into that area than previously, and perhaps Mr Montague could amplify on that.

(*Mr Montague*) I support that. Part of the process that we in RIU follow to achieve that is through the “Good Policy Making” guide, which is available to all departments and which takes departmental policy makers—through the steps needed to produce effective Regulatory Impact Assessments.

Mr Love

21. You have commented throughout that the regulatory reform procedure has been recognised or it is increasingly recognised that there is considerable additional resource that needs to be put into that in departmental terms for the deregulation process. Can this Committee be reassured that that resource is being delivered in order to bring forward Regulatory Reform Orders? Secondly, you have commented several times on the difficulties in particular in the area of legal expertise. Everybody recognises it is not enough to just go out there and get a couple of extra lawyers; there is a real bottleneck there. What reassurance can you give us that you will be able to get the expertise in order to be able to keep the flow of Regulatory Reform Orders coming?

(*Mr Campbell*) The Regulatory Reform Act did not increase the size of Whitehall. It did not increase the number of policy officials, so in some ways there was a fixed cake. So what has happened since is, you see, some people being keen to do it and running into legitimate questions where you are exploring the vires of the Act and the boundary of it. One of the roles of my unit and the Ministers here is to make sure that we do not just do the urgent things, the things that we traditionally did like bills, and to raise the profile and effort going into Regulatory Reform Orders. So the big message that comes from Mr Spellar and Lord Falconer seeing us every week and the management board and the Permanent Secretary giving very strong endorsement is “Yes, this “matters” seriously, and not just saying, “This was a problem that we have had for a while so we won’t deal with it.” That is not on. There is that sort of lesson. Likewise with the lawyers, discussions about shifting the focus between bills and RROs are going on. There is a clear message from the Chief Lawyer, and that sort of thing.

(*Mr Spellar*) Also, we do need to look at this constraint on legal resource and the balance of work between the in-house departmental lawyers and parliamentary counsel. We have been looking at one or two of these orders to look at where the constraints come, and the timescales that are involved as well; in other words, a draft order coming into the Department to parliamentary counsel, how long it takes to come out, and then again, as we move through this process, looking at where the bottlenecks are and looking at whether we need to

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[Mr Love Cont]

increase resource at that bottleneck or whether we need to be looking at an alternative route for covering that.

(Lord Macdonald of Tradeston) We will be prioritising it at the Regulatory Impact Unit.

Brian White

22. What inspection do you have of the quality of the lawyers? Do you review it? Is there an “OFSTED” of the parliamentary draftsmen?

(Lord Macdonald of Tradeston) What we are seeing is an increase in resource generally for the number of parliamentary counsel that we have, because that has proved to be something of a bottleneck in previous years for primary legislation. So recruitment is going on in that area. But what we have been trying to do to tackle this issue of legal drafting is we have had the Treasury Solicitors put in place arrangements on our behalf between the departmental lawyers and the parliamentary counsel, and what that is set up to ensure is that the departments start legal drafting earlier, and by that we mean preparing the legal instrument at or around the time the consultation document is drawn up. That would help produce better consultation documents as a result. The parliamentary counsel currently check the drafting by departments, and their workload would be easier to manage if they were involved earlier and given better notice. So the departmental lawyer will agree with the Treasury Solicitors when a draft is ready to go to the parliamentary counsel for checking, and that should help drive up the quality too. The other thing is we are piloting a mechanism for agreeing the priorities within government for RROs that currently compete for legal resources based on their complexity, their readiness, their time-criticality, and that will mean that the RRO work in future will be prioritised according to need. We have increased the legal resources available also to the Regulatory Impact Unit. They can now call on a full-time lawyer as part of a senior team inside Treasury Solicitors. This is all part of the bedding in of what is a very ambitious and promising part of the parliamentary process.

(Mr Spellar) From a departmental point of view that will only be of value if that actually reduces the bottleneck at a particular stage. If it is merely another layer and the bottleneck does not reduce, then there will not be advantage out of that. We will be monitoring these to ensure they are achieving the objective, otherwise we will have to have a further look at that procedure.

23. Is that at a departmental or Cabinet Office level?

(Mr Spellar) From our point of view, as we will be tracking through the particular Orders, we will obviously be tracking that through at departmental level, and obviously liaising with our colleagues in Cabinet Office who will be drawing on wider experience.

Brian Cotter

24. It was said earlier that this is not seen as fast-track procedure, the new Regulatory Orders, but some issues have come forward on the regulatory impact aspect of it, the gold plating. I would just like to urge that we do look at these aspects. It has been said in the Committee that there is great difficulty in coping with the workload with the reform business we are dealing with. If the impact of the Bills in the first place, as my colleague has rightly said, could really be addressed at the beginning and also the gold plating—and I do not want to trot out something I do not know the truth or otherwise on, but they say that in following certain procedures they produce four pages of regulation (the Working Time Directive, or something such as that), whereas we produce 40—I would urge that the Government could be concentrating on the initial impact assessment and not gold plating, then this would surely help officials available; rather than adding more officials to a procedure where we are trying to reduce the work.

(Mr Spellar) It is a worthwhile point, but at the same time we also have to look at the different actions of courts in different countries. If some courts are taking a more prescriptive approach and, therefore, insisting that everything has to be written in, that can have an impact obviously on our actions. We therefore have to get that balance right as well. The general thrust of your argument is very much taken on board.

25. The concerns coming through the Committee—people are saying that some departments are going to be put off using RROs because of the amount of work to take on, but also because of the bureaucracy involved in dealing with all these things—we have got lots of different aspects of trying to get this work done.

(Lord Macdonald of Tradeston) I agree. As I touched on earlier, we have done a lot of work in trying to improve the way in which we handle European legislation in particular, which is where the main complaints about gold plating come in. There was a pilot quality assurance study that was set up by Lord Falconer when he was in the Cabinet Office, and that was out of the concerns over criticisms expressed by business and others about how the UK handles the European legislation. I chaired a very useful conference in London in October of last year for business and officials from various levels of government. We have also produced a transposition checklist and transposition notes. It looks as though Europe has picked up on a UK agenda there; and through the Mandelkern Report, which we were instrumental in shaping, the word is going out at every level across Europe that they have to have much greater concern for the impact of legislation. At our end we will ensure that nothing is disproportionate to the way we implement.

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[Continued

Mr Steen

26. Following on that point of Mr Cotter, I was under the impression that gold plating went out in about 1996. I have not heard the phrase used for at least five or six years. Perhaps, as Mr White said, I have not been here, but I have been on the European Select Scrutiny Committee where we have not heard the phrase “gold plating”. I was under the impression that we just did not gold plate anymore, and instructions to the departments was to introduce European regulations at the minimum level rather than the maximum level. The second point following on from that is enforcement. It does not matter what you pass in law if you cannot actually enforce it. I am wondering what your instructions are on enforcement of rules and regulations. If you are to enforce the regulations to the minimum, and the regulations are minimal anyway, they do not have the same impact as if you gold plate them and say they must be in force. The last point is the *fiche d’impact*. I understood, and I do not know whether it is happening because one only gets this information from other countries, before any rule and regulation is passed in Europe they were obliged to do a risk assessment and a cost assessment of small firms, and the *fiche d’impact* was rather like the impact assessment in this country. I do not know whether it is happening. I also do not know whether this country has done anything to ensure, before any rule or regulation is passed within the Council of Ministers, a *fiche d’impact* is embarked upon and the decision as to whether to go ahead is affected by the result of that *fiche d’impact* enquiry?

(Lord Macdonald of Tradeston) I am sure it is the case that the British Government over many years have tried to reduce the effect of any gold plating of EU legislation. I think it is equally true that there still is a general perception in business and in other quarters, such as the media, that we in Britain are somehow overzealous in that regard. That is why, for instance, in 2001 there was a requirement set up that Government and departments must produce transposition notes setting out how each element of the European Directive has been transposed into domestic law. There will also be a report issued on improving the UK handling of European legislation, where one of the recommendations is that policymakers think about the transposition issues at a very early stage of policy development and negotiation phases of European legislation. We are also considering taking part in a study with other Member States on the transposition of European Directives which will focus on whether different transposition practice used in different countries leads to greater administrative burdens on business. That study would highlight best practice in avoiding over-implementation. I should also say that there is an enforcement *concordat* which was launched in 1998. It is a non-statutory code but it provides protection for business against overzealous, unreasonable application of regulation by enforcement officers. The code includes a mechanism for complaints about enforcement to be addressed. Initiatives such as that *concordat* I hope are promoting a business-friendly and more consistent approach to enforcement. The adoption of that *concordat* by central and local government

organisations is voluntary, but 96 per cent of organisations have signed up for it. I do not know whether any of my colleagues can address any detail that I cannot on your questions about the European dimension.

(Mr Spellar) It is not universal that regulatory impact assessments are undertaken before policy decisions are taken. This is a matter of some concern to us.

Chairman

27. You made a suggestion in the document that Government would “keep under review whether this rigorous and protracted scrutiny is appropriate for all proposals”. If you do see a problem, how would you view the procedure to change this? Should we not be careful that the problem is not really perceived to be the Government wishing to avoid troublesome parliamentary scrutiny; or would that be an unfair comment to make?

(Mr Spellar) Unfair on whom?

28. On the Government!

(Lord Macdonald of Tradeston) That certainly would not be the way I would represent it, Chairman. If we go back to the comments that I made about the idea of members perhaps being discomforted by any thought they would be whipped into voting against their own recommendations—is that an issue you wish me to pick up on here in this context, because I would just like to say I believe it to be a very remote prospect, and we would obviously do everything to avoid that. We certainly do not have anything in mind. As our memorandum has said, it is our hope that a debate on a motion to disagree with the Committee’s report would never happen, as any disagreement should have been sorted out long before we got to that stage. I have repeated the Government’s undertaking that we would not proceed with a draft Order in the event of a hostile report. There has been some debate within Government as to whether the adjournment type debate might be of use, where the Government was minded to disagree with a recommendation made in a Committee report; but the firm conclusion was that it would serve no useful purpose and, indeed, would waste scarce parliamentary time to have an intermediate debate before the House was to debate a substantive motion under the Standing Order procedures to disagree with a Committee’s report. It is worth noting in this context that the Standing Order procedures are robust, even if they have been untried since 1994. The real value, I suppose, is the deterrent of sorts, and as long as that continues if it encourages early dialogue, while we might appear to agree to disagree, my anticipation is that it would never happen. If it looks remotely possible that these procedures might be triggered then we would want to be in very close and very early contact with the Committee to seek ways round that.

29. I think that is helpful. You would seek our views at that stage if you saw a problem?

(Lord Macdonald of Tradeston) Indeed.

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[Continued

Mr Lazarowicz

30. Just one technical point, the Government in its memorandum makes a comment that, "The Standing Orders do not appear to make provision for what should happen if, as a result of its 2nd stage scrutiny, the Committee were minded to report approving a draft order, but subject to the Department making certain changes or to some other recommendation". I think there was a concern that if the Committee were to report adversely at a 2nd stage procedure to make recommendations as to how objections could be overcome, then the Government's view was that the Department concerned might need to re-start the entire scrutiny process from the beginning. From the Committee's point of view I think we fail to see why that should be a problem, because it is quite possible, for example, for a draft Order to be withdrawn and one re-laid which meets the Committee's objections. Why is it the Government feels it would be necessary to start the entire procedure again in that eventuality?

(*Lord Macdonald of Tradeston*) Chairman, I would be very grateful for the Committee's views on this, but I would hope the circumstances simply do not arise. I suppose the Committee might write to the Minister warning of the likelihood that an Order could be withdrawn, revised or re-laid. Our feeling is that there will be a way round this with close consultation between us. I do not know whether Mr Spellar, or any of my other colleagues, have a view on it.

(*Mr Montague*) If I could just expand slightly. It is a question that has been put to us by departments which, because it was very hypothetical, we found it hard to answer. The presumption is that we start from the view that these circumstances would not arise, since there would be close communication between departments and the two Committees. I think the worry stems from the fact that large and complex proposals were going to come before the Committee, and that the 1st stage report might conceivably make very substantial recommendations which the Department would wish to accept and implement; but it does so in a way when it tables the draft Order for 2nd stage scrutiny that does not quite hit the spot so far as the Committee is concerned. The question then would be: what options were open to the Committee, and then for the Government? It may be that the Committee would report adversely against the proposal, or want to make substantive recommendations for further change. It was just to what extent would we need to go around the loop again.

Mr Lazarowicz: I think the point was to ensure it was clear within the Government, that it was only in extreme circumstances it would be envisaged that the entire process needed to be started again. In most cases there are much more simple ways of dealing with any objections. That was the point I wanted to pursue.

Mr Havard

31. You have really covered my question about this business of conflict resolution, as opposed to potential conflict creation and problems with Members being whipped and so on. The Chairman

obviously thought that the remarks you made earlier on were very positive in that regard. I am just concerned myself that those moves are got right; because potentially there is a conflict there if that close co-operation or consultation you have discussed does not actually take place, if you are not going to use the procedures that may have been suggested by the Committee in the past. I think what you have said was probably positive as well; the Chairman probably understood it better than I did, but I think that was an important statement for you to make given the background as to why we need it in the first place.

(*Lord Macdonald of Tradeston*) Chairman, in my final remarks I would just like to say how pleased I am to have been here and to have met the Committee for the first time. It is very much in the spirit of what Mr Havard says, that we come here in a very co-operative spirit. We are obviously in pursuit of what was seen as a very benign piece of legislation when it went through Parliament. With the maximum co-operation of Government and members of the Committee then I think we can play a very positive role in advancing the whole legislative process. I am excited by that and have spoken to Lord Dahrendorf in another Place and he has a very high regard for the work that has been done here and, indeed, of the potential of the processes we are all involved in. I would certainly go forward in a very confident spirit with the realities of departmental life being whispered in my right ear by my colleague Mr Spellar, who may have a grittier view of the world.

(*Mr Spellar*) I think we look forward to working with the Committee to deal with the problems of success.

Chairman

32. Can I just put in the important point about the laying of one item per week. The issue, as far as the Committee is concerned, is if we see in the forward look (or whatever we now call it) identifying what is a problem, it is not so much the laying of a rigid number, or anything like that; what we would be concerned about, and what we hope the Government will accept, is that we cannot have periods when nothing is coming before us and then have periods when a whole number of things are coming forward which involve a lot of work jumping from one item to another—remembering that within that period we can have a large number of items still before us at varying stages, some needing evidence-taking, some needing correspondence with ministers, with other organisations and everything. Are we reasonably happy that it is not necessarily one a week, but that the Government gives us an assurance that it is not suddenly going to put masses that make it impossible for us to cope? That is what we are saying, and that is our concern.

(*Lord Macdonald of Tradeston*) Chairman, what I will try to do as relentlessly as possible is accelerate the flow of work but, at the same time, work very hard indeed to try and smooth the flow of that work as well.

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[Continued

[Chairman *Cont*]

Chairman: If we see some problem in the forward look that is going to be produced, if we let you know as soon as we see a problem hopefully we will resolve that problem in an amicable way to make sure we are

able to do the job laid on us by Parliament, and that reform can go forward. Can I thank you and your team for coming before us, and thank my Committee members. Thank you very much.

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