



House of Commons
Regulatory Reform Committee

Proposal for the Regulatory Reform (Sunday Trading) Order 2004

First Report of Session 2003–04



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*Report, together with formal minutes and
appendices*

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The Regulatory Reform Committee

The Regulatory Reform Committee is appointed to consider and report to the House of Commons 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.

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Powers

The full constitution and powers of the Committee are set out in House of Commons SO 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/parliamentary_committees/regulatory_reform_committee.cfm.

A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Brian Dye (Committee Assistant) and Liz Booth (Secretary).

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Summary

The proposed Order contains two separate proposals, both of which are intended to amend the law regarding trading on Sundays.

The purpose of **proposal A** is to remove the requirement that occupiers of most shops with a floor area of 280m² or more (“large shops”) have to notify their local authority of their Sunday opening hours, or any changes to them, at least fourteen days in advance of any changes taking effect. It will also remove the requirement on local authorities to keep a register of Sunday opening hours for inspection by members of the public.

The purpose of **proposal B** is to repeal section 26 of the Revenue Act 1889, which prohibits the sale of methylated spirits between the hours of 10pm on a Saturday and 8am on a Monday.

The Committee considers that these proposals are straightforward and impose no new burdens. It recommends that a draft order in the same form as the proposal be laid before the House.

1 Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the proposal for a Regulatory Reform (Sunday Trading) Order 2004 in accordance with Standing Order No. 141. We have concluded that a draft order in the same terms as the proposal should be laid before the House.

2 Introduction

2. On 14 October 2003 the Government laid before Parliament a proposal for the Regulatory Reform (Sunday Trading) Order 2004 in the form of a draft of an order and an explanatory memorandum from the Department for Trade and Industry (the Department).¹ The proposed regulatory reform order would amend two separate and unrelated pieces of primary legislation, both of which relate to shops which trade on Sundays.

3. **Proposal A** would amend the Sunday Trading Act 1994 (the 1994 Act) in order to remove the requirement on the occupiers of certain shops to notify the relevant local authority of the hours they intend the shop to open for trading on a Sunday.

4. **Proposal B** would amend the Revenue Act 1889 (the 1889 Act) to repeal the provision which prohibits methylated spirit from being sold between 10pm on a Saturday and 8am on a Monday.

5. The House has instructed us to examine the overall proposal against the criteria specified in Standing Order No. 141(6) and then, in the light of that examination, to report whether the Government should proceed, whether amendments should be made, or whether the order should not be made.²

6. Our discussion of matters arising from our examination is set out below. Where a criterion specified in Standing Order No. 141(6) is not discussed in the report, this indicates that we have no concerns to raise about that criterion. In the course of our examination, we requested further information from the Department about a number of issues relating to the proposal. The Department's response is reproduced at Appendix B.

3 Purpose of the proposal

7. The proposal for the Order comprises two entirely separate elements, both of which relate to the ability of retailers to trade on Sundays. The two elements have been analysed separately as proposal A and proposal B.

1 Copies of the proposal are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/regulation/act/proposals.htm>

2 Standing Order No. 141(2)

Proposal A: Sunday trading notification requirements

8. The purpose of proposal A is to amend the Sunday Trading Act 1994 (the 1994 Act) to remove a burden which falls on the occupiers of certain retail premises and on certain local authorities.

9. With certain exceptions, retail premises which have an internal floor area of 280 m² or greater (“large shops”) are permitted to be open for trading on a Sunday for no more than six continuous hours between the hours of 10am and 6pm. Schedule 1 to the 1994 Act presently provides that if a large shop is to open for trading on a Sunday, the occupier is required to notify the local authority of the hours during which the shop is intended to be open. Notification of Sunday opening hours, or of any variation to the notified hours, must be given to the relevant local authority at least fourteen days in advance of the date on which the hours are to take effect. Local authorities are required to maintain a register of these notifications and make it available for inspection by the public.

10. The Department argues that the present requirements serve little effective purpose, as there is little or no evidence that the public inspects registers of Sunday opening hours, and registers are barely if ever used by enforcement authorities for the purposes of checking whether large shops are trading outside either their notified hours or the statutory maximum six-hour period. It considers that these requirements impose unnecessary legal burdens on both large shops and local authorities.

11. The Department therefore proposes to remove the requirement on large shops to notify local authorities of their Sunday opening hours, and the requirement on local authorities to maintain a register of opening hours.

Background to the proposal

12. The Department indicates that shop opening hours were regulated by the Shops Act 1950, but the law regarding opening on Sundays “was considered contradictory and was widely ignored.”³ Following concerns about this position, and extensive consultation, the 1994 Act established the present arrangements for the opening of shops on Sundays.

13. The Department believes that the 1994 Act established “a reasonable compromise between those supporting unlimited opening of all shops and those totally opposed to all trade on Sundays.”⁴ Under the provisions of the Act, large shops are restricted to a maximum of six hours’ continuous trading on a Sunday between 10am and 6pm. Large shops may not open on Easter Sunday or Christmas Day when it falls on a Sunday.

14. There are certain exemptions to the restriction on large shop opening. Particular categories of large shop, such as farm shops, off-licences, and pharmacies are exempt from the six-hour restriction.⁵

15. Shops with an internal floor area of less than 280 m² (“small shops”) are not restricted in the hours they can open on a Sunday.

³ Explanatory statement, para 10

⁴ *Ibid.*, para 11

⁵ More examples are given in para 12 of the explanatory statement.

16. Particular arrangements are made for large shops whose occupiers intend to observe the Jewish Sabbath by closing their shops on a Saturday.⁶ Provided an occupier registers this intention with the local authority, and the shop is closed on a Saturday, the occupier is not restricted in the hours on which the shop may open on a Sunday. Occupiers of such shops are subject to entirely separate registration requirements, which are set out in paragraph 8 of Schedule 2 to the 1994 Act. The Department does not envisage any change to these requirements.

Proposal B: sale of methylated spirits on Sundays

17. The purpose of proposal B is to repeal section 26 of the Revenue Act 1889, which prohibits the sale of methylated spirits between the hours of 10pm on a Saturday and 8am on a Monday.

Background to the proposal

18. The Department explains that section 26 of the 1889 Act, which it now proposes to repeal, was intended to apply to licensed retailers of methylated spirits, at a time when the Government generated revenue from the issue of retail excise licences.⁷ Until the 1960s retailers were obliged to obtain a retail excise licence to allow them to trade in methylated spirits. This provision of the law formed part of the enforcement mechanism for such licences. Since the abolition of retail excise licences the only function of this provision has been to support the social law on Sunday trading.

19. The Department considers that since the introduction of the Sunday Trading Act 1994, which reformed the social law relating to Sunday trading, the prohibition on the sale of methylated spirits on Sundays is anomalous, burdensome and obsolete. It states that some traders feel obliged to comply with the restriction, while others are ignorant of it or knowingly disregard it without fear of prosecution. This is claimed to put the former group at a competitive disadvantage. The Department cites evidence from a previous consultation performed by HM Customs and Excise in October 2000 in support of its view that there is broad agreement among retailers and pharmaceutical professionals for repeal.

20. In 1998 our predecessors on the Deregulation Committee considered a proposal for a deregulation order relating to the retail sale of methylated spirits in Scotland.⁸ The purpose of that proposal was to remove certain requirements in the Methylated Spirits (Sale by Retail) (Scotland) Act 1937, which required all retailers of methylated and surgical spirits in Scotland to register with the local authority, record all sales of such spirits and label all bottles with the name and premises of the retailer and the type of spirit in the container. The points at issue in that proposal were ones relating to the protection of the public. It is not argued that any similar considerations apply to the present proposal.

⁶ The Department indicates that this provision only applies to shops whose occupiers are "persons of the Jewish religion".

⁷ Explanatory statement, paras 19–23

⁸ Fourth Report of Session 1997–98, *Proposal for the Deregulation (Methylated Spirits Sale by Retail) (Scotland) Order 1998*, HC (1997–98) 614. The Order was subsequently enacted as S.I. 1998/1602.

4 Extent of the proposal's application

21. **Proposal A** extends to England and Wales only. The Department states that the National Assembly for Wales was consulted on the proposed reform of the law before the publication of the consultation document, and had no comments. The Department does not indicate what the present situation is in Scotland or in Northern Ireland, nor whether there are any proposals to amend the law in those jurisdictions.

22. **Proposal B**, when originally conceived in policy terms, was intended to apply to the entire United Kingdom. At present it would, if enacted, extend to England and Wales and to Northern Ireland only, as regulatory reform orders cannot deal with matters which are devolved to the Scottish Executive and the Scottish Parliament. The Department has set out the difficulties which HM Customs and Excise have encountered in including the proposed repeal in primary legislation, and the reasons why it was considered appropriate to include the repeal in the proposed regulatory reform order.⁹

23. The Scottish Executive has confirmed that the provision remains on the statute book in Scotland, and is considered antique.¹⁰ The Department has indicated that the Scottish Executive is considering the options for repeal of section 26 in Scotland. This may be done either by Act of the Scottish Parliament or by a deregulation order under the Deregulation and Contracting Out Act 1994.¹¹ HM Customs and Excise have been in correspondence with the Scottish Executive on the matter since January 2003. There is at present no indication of the timescale within which the reform might be achieved in Scotland.¹²

5 Assessment of the proposal against the Standing Order No. 141(6) criteria

Inappropriate use of delegated legislation

24. Both proposal A and proposal B appear to be appropriate for delegated legislation.

Removal of burdens

Proposal A: Sunday trading notification requirements

25. The Department considers that proposal A imposes the following burdens:

- a) A burden on **occupiers of large shops**, who are required to administer the notification of Sunday trading hours; and

⁹ Appendix B

¹⁰ Appendix B

¹¹ The order-making powers in the Deregulation and Contracting Out Act 1994 are still available to Scottish Ministers in respect of legislation relating exclusively to Scotland.

¹² Appendix B

b) A burden on **local authorities**, who are obliged to maintain a register of such notifications.

26. In addition, we consider that the requirement on local authorities to make a register of Sunday trading hours accessible to the public may also constitute an additional burden on an authority.

Occupiers of large shops

27. The Department suggests that the removal of burden (a) would benefit occupiers of large shops by reducing their administrative costs. We consider that the occupiers of large shops may also benefit from not having to wait two weeks between notification of a change to Sunday trading hours and implementation. **We are satisfied that the proposal removes a burden on the occupiers of large shops situated in England and Wales wishing to trade on a Sunday.**

28. A number of respondents to the consultation, generally representing national chains of large shops, suggested that the notification requirement was particularly burdensome for large shops wishing to modify their Sunday trading hours for the Christmas season.

Local authorities

29. The Department states that the removal of burden (b) would benefit approximately 300 local authorities who are presently required to maintain a register by releasing resources to do other work. We consider that local authorities would also benefit from not having to make arrangements for public consultation of a register of notifications. **We are satisfied that the proposal removes a burden imposed on local authorities in England and Wales.**

Proposal B: sale of methylated spirits on Sundays

30. The Department considers that proposal B, in removing the prohibition on the sale of methylated spirits between 10pm on Saturday and 8am on a Monday, would remove a burden on traders in methylated spirits.

31. The Department argues that the proposal, if enacted, would remove a burden on businesses which trade in accordance with the existing law. We consider that the burden in the existing law in fact falls on all businesses which trade in methylated spirits, whether or not they choose to comply with the law. **We are nevertheless satisfied that the proposal removes a burden imposed on businesses in England and Wales and in Northern Ireland.**

32. The Department also believes that the removal of this burden would 'level the playing field' between traders who are aware of and comply with the existing law and traders who are ignorant of it or who choose to ignore it.¹³

¹³ Explanatory statement, para 31

Maintenance of necessary protection

Proposal A: Sunday trading notification requirements

33. The Department considers that proposal A would not, in practice, lessen any existing protection. It concedes that the proposal would remove a theoretical protection for consumers, as they would no longer be able to inspect the register of notifications held at local authority offices. It nevertheless argues that the protection is not necessary, as ‘direct research and information from respondents indicates that the register is not consulted and that maintaining it serves no purpose.’¹⁴

34. The Department states that large shops opening on Sundays will still be required to display their opening hours. Local authorities will remain responsible for the enforcement of the 1994 Act. Whereas under the present enforcement arrangements, local authorities have to prove that a shop was open for longer than its notified hours, by reference to witnesses, the Department has indicated that, under the proposed arrangements, local authorities will simply have to witness a shop failing to display a notice, or trading outside the overall permitted hours (i.e. trading for more than six continuous hours or trading before 10am or after 6pm).

35. One response to the consultation, from the shopworkers’ union USDAW, indicated that the proposal might remove a necessary protection for shopworkers, in that the present arrangements effectively inhibit large shops from changing their opening hours regularly, to the disruption and detriment of the working patterns of shopworkers.

36. We asked the Department whether it considered that large shops were likely to change their working hours more frequently as a result of the change in legislation. The Department considered that the present arrangements do not in fact inhibit large shops from changing their Sunday opening hours, as they are at present free to do so from week to week, subject to making the necessary notifications (at an estimated cost of £12.50 per notification per shop). It has argued that it is not in the interests of large shops to make frequent changes to their opening hours, as this would be likely to annoy and frustrate customers, and that it is similarly in the interests of large shops to ensure that their staff are available for work.

37. The Department therefore considers that the possible adverse effect on shopworkers is unlikely to materialise, and that subsequent discussions with USDAW have convinced the union of that view.¹⁵ It has in addition indicated that “comprehensive protection” for shopworkers in England and Wales who do not wish to work on Sundays is provided for in the Employment Rights Act 1996, and that the hours of shopworkers who do wish to work on Sundays are subject to contractual agreements between the shopworker and the employer. In response to our request for further information, the Department has set out the measures which are presently in place to monitor the working patterns of Sunday shopworkers by means of the quarterly Labour Force Survey.¹⁶

¹⁴ Explanatory statement, para 34

¹⁵ Appendix B

¹⁶ *Ibid.*

38. A number of business respondents to the consultation took the opportunity to press for a further review of the operation of the 1994 Act, citing in particular the distinction made between large and small shops and the pressure on large shops to open for longer hours on Sundays. The Department's comments on individual consultation responses state that the proposals do not concern the overall hours within which large shops are permitted to open, nor the maximum length of time they can open. In its comments on the response from the Co-operative Group, which was concerned about any further changes to the 1994 Act, the Department stated that the Government sees no need to review the operation of the Act.¹⁷

39. **We consider that proposal A would not remove any necessary protection.** We are pleased to note that the Government sees no need to review the operation of the 1994 Act. We note that the 1994 Act provides a carefully-structured regime for Sunday trading, and that the present arrangements appear to have wide support. Any proposal to alter the present arrangements must proceed on the basis of the fullest possible consultation. Given the nature of these arrangements, and the consensus on which they are based, the presumption must be that the most appropriate route for any further amendment should be by primary legislation.

Proposal B: sale of methylated spirits on Sundays

40. The Department argues that the last remaining useful function of section 26 of the 1889 Act, that of supporting the social law on Sunday trading, was superseded by the passage of the 1994 Act. It does not consider that the proposal would remove any necessary protection. **We agree.**

Preventing exercise of rights or freedoms

Proposal A: Sunday trading notification requirements

41. The Department considers that proposal A would remove the existing right of members of the public to consult the registers held by local authorities.¹⁸ It nevertheless considered that this right was 'of negligible significance', since 'it appears that the public do not ask to view the register.' It further argued that the right of members of the public to know when a large shop proposed to open on a Sunday would remain, as shops would continue to be required to display their opening hours inside and outside the premises. It might therefore appear that the proposal would not remove any right or freedom which a person might reasonably expect to exercise.

42. The assertion in the explanatory statement was said to have been made on the basis of direct research and a pre-consultation exercise. We asked for further details of the exercise and how it was conducted. The Department has explained that twelve local authorities were contacted directly by telephone, and visits were made to five of these authorities to examine how the registers were used and maintained.¹⁹ The authorities contacted were

¹⁷ A summary of all responses to the consultation, and the Government's comments, is at annex B of the explanatory statement.

¹⁸ Explanatory statement, para 38

¹⁹ The authorities visited were the City and County of Swansea, Newport City Council, Bristol City Council, Liverpool City Council and Manchester City Council. Authorities contacted by telephone or e-mail were the London Boroughs of

selected on the basis of geographical spread and their likely experience of operating Sunday opening registers. Officers at the authorities consulted were also asked whether they knew of any other local authorities which might have different views or experiences. We note that the authorities selected for the pre-consultation exercise were not fully representative of the range of authorities which administer Sunday trading arrangements: for instance, few if any of the authorities identified cover rural market towns or new towns.

43. The results of the exercise indicated that, to the knowledge of the responsible officer in each authority, the register of Sunday opening hours had never been consulted. One of the authorities consulted indicated that the register had on rare occasions been found useful, to answer queries from shoppers who wanted to know whether a particular store was open—information which could also have been obtained by contacting the store. Another authority considered that the register was useful in facilitating a check of a store’s notified hours against its advertised hours in newspapers. The Department considers that the hours within which a large shop is permitted to open are sufficiently clear to enable a local authority to check a store’s compliance with the requirements of the law without recourse to a register.

44. The Department states that it has no reason to believe that the findings of the pre-consultation exercise were not truly representative, and its discussions with the Local Government Association (LGA) have confirmed it in this view.²⁰ In addition, USDAW officials and the Keep Sunday Special campaign have confirmed to the Department that they have never consulted the register. The Department asserts that Keep Sunday Special were unable to give the Department specific examples of how the register served a useful purpose.²¹

45. We are satisfied that there is no evidence to suggest that maintenance of the register of Sunday trading hours serves a useful purpose. **We are therefore satisfied that the proposal, if enacted, will not prevent the exercise of any right or freedom which a person might reasonably expect to continue to exercise.**

Proposal B: sale of methylated spirits on Sundays

46. The Department considers that the proposal increases the consumer’s freedom to buy methylated spirit on a Sunday. **We agree.**

Adequate consultation

47. The Department published a consultation document on both proposals on 18 March 2003. The document was sent to 211 organisations, comprising large retailers, some local authorities, business associations, individuals and other organisations.²² The document was made available on three central government websites and one coordinating website for local authority regulators, in addition to being sent out via the Local Government

Croydon, Haringey, Kingston and Merton, Nuneaton and Bedworth Borough Council, Newcastle City Council and Bromsgrove Borough Council. A table summarising the pre-consultation process is at Appendix B.

²⁰ Appendix B

²¹ *Ibid.*

²² Listed at Annex A of the explanatory statement.

Association Public Protection monthly bulletin (distributed to some 300 local authorities). Consultees were given over twelve weeks to respond, above the recommended minimum set out in the Government's Code of Practice on written consultation.²³

48. 46 responses were received: 25 from retailers, one from another business, six from local authorities, three from business associations, three from professional organisations, three from other organisations and two from individuals. The Department's analysis of the responses in raw statistical terms indicates 39 responses in favour of proposal A, three opposed and four neutral.²⁴ The 35 responses to offer a view on proposal B were unanimously in favour.²⁵

49. The consultation document was not sent directly to all local authorities. Annex A of the explanatory statement indicates that the only local authorities specifically to be consulted during the consultation period (as opposed to the pre-consultation exercise) were Liverpool City Council, Manchester City Council and Newport City Council. In addition the Local Authorities Co-ordinators of Regulatory Services (LACORS) were consulted, and notices of consultation were sent out via the LGA Public Protection monthly bulletin. In total, six local authorities made responses to the consultation.²⁶

50. On the basis of the pre-consultation exercise described at paragraphs 42 to 44 above, and subsequent discussions with the LGA and LACORS, the Department considered that it was not necessary to send copies of the consultation paper directly to every local authority affected by the present requirements. The LGA considered that it was sufficient to notify the relevant officials in its member authorities by means of notices in its Public Protection bulletin and on the LACORS website.

51. We are satisfied that the Department has consulted adequately on the proposals, and that the draft Order has taken appropriate account of the results of the consultation.

52. As the pre-consultation exercise substantially informed the Department's subsequent consultation strategy, details of that exercise were clearly material to our consideration of the adequacy of the consultation process. **While we consider that the consultation strategy adopted by the Department was appropriate to the circumstances, we believe that fuller details of the pre-consultation exercise should have been included in the explanatory statement which accompanied the proposal for the Order. We also consider that the Department should have extended the pre-consultation exercise to a more representative sample of local authority areas.**

²³ Explanatory statement, para 47

²⁴ Ibid., para 50

²⁵ Ibid., para 51

²⁶ Borough of Poole, Liverpool City Council, Darlington Borough Council, Blackpool Borough Council, London Borough of Enfield and London Borough of Haringey.

Costs and benefits

53. The Department does not believe that proposal A would impose any costs on business. The regulatory impact assessment indicates that the annual administrative savings to business and local authorities would amount to £60,000—£75,000.²⁷

54. The Department believes that the benefits of the implementation of proposal A, other than cost savings, are the reduction in administrative requirements on businesses and local authorities.

55. The Department sees no costs to business from the implementation of proposal B, but considers the cost savings to businesses currently compliant with the legislation to be negligible.

56. The assessed benefits of proposal B, other than the small cost savings, are described by the Department as:—

- the removal of a restriction on business;
- the removal of a restriction on customers;
- the removal of confusion as to the state of the law in this area;
- provision for a level playing field for all retailers; and
- ‘the removal of unnecessary and archaic legislation from the statute book’.

57. Regulatory impact assessments for proposals A and B are attached to the explanatory statement.²⁸ **On the basis of the regulatory impact assessments which have been prepared, we are satisfied that both proposals have been the subject of, and taken appropriate account of, estimates of increases or reductions in costs or other benefits which may result from the implementation of the proposed Order.**

6 Conclusion

58. We conclude that a draft order in the same terms as the proposal should be laid before the House.

²⁷ The regulatory impact assessments in respect of each proposal are at Annex C and D of the explanatory statement respectively.

²⁸ Explanatory statement, annexes C and D

Written evidence

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Appendix A

Letter from the Clerk of the Committee to the Department of Trade and Industry

Proposal for the Regulatory Reform (Sunday Trading) Order 2004: request for further information

Thank you for your appearance before the Committee on Tuesday, and for the helpful briefing you and your colleagues from the Department of Trade and Industry and HM Customs and Excise gave on the proposal.

The Committee considered the proposal at its subsequent meeting and resolved to seek further information from the Department. The issues which concern the Committee are set out below, together with questions arising from them, under the relevant categories for consideration set out in the Regulatory Reform Act and the Committee's Standing Order.

Whether the proposal continues any necessary protections (S.O. No. 141(6)(c))

1. One response to the consultation, from the shopworkers' union USDAW, indicated that the proposal might remove a necessary protection for shopworkers. USDAW argued that the present arrangements effectively inhibit large shops from changing their opening hours regularly, to the disruption and detriment of the working patterns of shopworkers. To remove this inhibition might result in removing a necessary protection from shopworkers.

Q1 Does the Department consider that large shops are likely to change their Sunday trading hours more frequently as a result of the change in legislation?

Q2 Does the Department consider that more frequent changes to the Sunday trading hours of large shops may be to the detriment of shopworkers?

Q3 What measures are presently in place to monitor working patterns of Sunday retail staff?

Q4 What measures, if any, are proposed to monitor the effect of the new arrangements on the working patterns of Sunday retail staff?

Whether the proposal would remove any rights and freedoms (S.O. No. 141 (6)(j))

2. The Department has stated that "the public do not ask to view the register" of Sunday opening hours kept by local authorities (explanatory statement, para 38). This assertion is said to be based on the results of direct research and a pre-consultation exercise, but no indication has been given of the method or the results of this exercise.

Q5 The Department has asserted, in its explanatory statement, that members of the public do not ask to inspect registers kept by local authorities. Please explain what the direct research into use of the registers of Sunday opening hours referred to in paragraph 34 of the explanatory statement consisted of, how it was conducted, and what were the results of that research.

Q6 Please also indicate any other evidence which has led the Department to conclude that registers of Sunday opening hours are not consulted and that maintaining them serves no purpose.

Q7 Please indicate whether there is any evidence to suggest that registers of Sunday opening hours are used in a systematic way by local authorities or other bodies concerned with the monitoring of Sunday opening hours (e.g. trading standards officers).

Q8 Please provide the Department's assessment of the standard to which the present requirement for the maintenance of a register of Sunday trading hours is observed by the relevant local authorities.

Whether the proposal has been the subject of, and takes appropriate account of, adequate consultation (S.O. No. 141(6)(d))

3. Annex A of the explanatory statement indicates that the only local authorities specifically to be consulted on the proposals were Liverpool City Council, Manchester City Council and Newport City Council. The Local Authorities Co-ordinators of Regulatory Services (LACORS) were consulted, but no indication of any formal or informal response from this body has been given.

4. As only six local authorities responded directly to the consultation paper, and two of these raised concerns as to how the proposed reform would affect their ability to enforce Sunday trading hours, there is some doubt as to whether the evidence from the consultation supports the view which the Department has reached on the usefulness to local authorities of the register.

Q9 Please explain how the pre-consultation with local authorities on the use of their registers was conducted; which local authorities or representative bodies were approached; which ones responded, and what were the results of this pre-consultation.

Q10 Please indicate what discussions the Department has had with the Local Government Association concerning the proposed modification of local authority enforcement of Sunday trading, and whether the Association is content with the proposals.

Q11 Please explain the reasons why local authorities were not approached directly for their views during the formal consultation exercise.

Other matters arising from the Committee's consideration (S.O. No. 141(5))

5. Proposal 2 extends to England and Wales and to Northern Ireland. As the matter is not a reserved one, the change to the law in Scotland cannot be made by means of an RRO. The Department has indicated that the Scottish Executive will be making separate arrangements for the Scottish Parliament to repeal this section of the law as it applies to Scotland.

Q12 Please indicate what discussions the Department has had with the Scottish Executive about the co-ordination of the repeal of section 26 of the Revenue Act 1889 in England and Wales, Scotland and Northern Ireland, should the RRO succeed.

I would be grateful to receive your response to the above questions, together with any further information the Department believes would be helpful, as soon as possible, and in any case not later than Friday 15 November.

31 October 2003

Appendix B

Letter to the Clerk of the Committee from the Department of Trade and Industry

Proposal for the Regulatory Reform (Sunday Trading) Order 2004: request for further information

Thank you for your letter of 31st October.

I enclose a joint response from ourselves and Her Majesty's Custom & Excise. I also enclose a table which summarises responses from Local Authorities.

Please let me know if further information would be of assistance.

14 November 2003

DTI response to questions on Sunday Trading Act 1994 notification procedures & HMCE response to question 11 on the sale of methylated spirits on a Sunday

Whether the proposal continues any necessary protections (S.O. No. 141(6)(c))

Q1 Does the Department consider that large shops are likely to change their Sunday trading hours more frequently as a result of the change in legislation?

DTI Response

At present, subject to making the necessary notifications — there is nothing to stop shops altering their Sunday trading patterns every weekend if they so chose. We consider it unlikely that removing the notification procedure would encourage large shops to change their Sunday trading hours more frequently without giving reasonable notice. If customers do not know what hours stores are open, stores will simply lose business. It is likely that customers would be annoyed and frustrated by frequent changes in opening hours. It is also in the interests of stores to ensure that their staff are available for work — they are essential to the store opening and providing a good service. The implied adverse impact on shop workers is therefore misleading.

Although USDAW mentioned this as a concern, they did nonetheless support the proposal. When we spoke to USDAW officials and explained our position, they found our points convincing, but saw no need to write in again as they had already indicated support for the proposal.

Q2 Does the Department consider that more frequent changes to the Sunday trading hours of large shops may be to the detriment of shopworkers?

DTI Response

The Sunday Trading Act 1994 provided comprehensive protection (now consolidated into the Employment Rights Act 1996) for shopworkers in England and Wales who do not wish to work on Sundays.

All shopworkers, except those employed to work solely on Sundays, have the right to refuse to work on Sundays and to be protected against dismissal or detriment (for instance, refusal of promotion or training opportunities) for doing so.

If shopworkers are willing to work on Sundays, their hours—like other general terms and conditions of employment—are a contractual matter for negotiation and agreement between them (or their representatives) and their employers, as are any subsequent variation in those hours. Even if shopworkers have entered into a contractual agreement, they can elect to change this agreement subject to a 3 months notice period.

As already indicated in our response to question 1, we do not consider that stores will wish to change their hours frequently as a result of the removal of notification procedures (the need to write one letter at a cost of approximately £12.50 is not a major disincentive to change hours frequently now if they wished to do so, it is in our view simply an unnecessary burden that they should have to do so).

Q3 What measures are presently in place to monitor working patterns of Sunday retail staff?

DTI Response

The Labour Force Survey (LFS) is a quarterly sample survey of households (around 60,000 each quarter) living at private addresses. Its purpose is to provide information on the UK labour market that can then be used to develop, manage, evaluate and report on labour market policies. The LFS is carried out under a European Union Directive and uses internationally agreed concepts and definitions. For example it is the source of the internationally comparable (International Labour Organisation) measure known as 'ILO unemployment'.

Given that the UK is obliged to carry out a quarterly survey under a European Council regulation. The questions on whether respondents work on a Sunday are a requirement of the EU Labour Force Survey so should continue to be collected in the future.

The Spring 2003 LFS, indicates there were 2.51 million employees working in retail industry in England and Wales, 23 per cent (579,000) 'usually' worked on Sunday. There are also employees who occasionally work on a Sunday. On this basis there were 1.13 million (45 per cent of all retail employees) working on Sunday.

DTI very seldom receives correspondence about protection for Sunday shopworkers in England and Wales. This is a strong indication that it is not a matter of general concern to employees.

Shopworkers can complain to an employment tribunal if they are dismissed or subjected to detriment for refusing to work on Sundays. Numbers of complaints to employment tribunals are very low. On average there have been 18 per year in recent years. There were 11 in the 2002/2003 financial year.

Q4 What measures, if any, are proposed to monitor the effect of the new arrangements on the working patterns of Sunday retail staff?

DTI Response

None, beyond the continued Labour Force Survey. The proposed notification changes will not affect the rights of Sunday shop workers which are now contained in the Employment Act 1996. (Please see also answer to Q3)

Q5 The Department has asserted, in its explanatory statement, that members of the public do not ask to inspect registers kept by local authorities. Please explain what the direct research into use of the registers of Sunday opening hours referred to in paragraph 34 of the explanatory statement consisted of, how it was conducted, and what were the results of that research.

DTI Response

As part of their preliminary research, DTI officials contacted a range of local authorities across England and Wales determine how local authorities viewed the notification procedures and if they considered that they could be removed, without jeopardising the enforcement of the Sunday Trading Act. The authorities were chosen to provide geographical spread, but focused on those authorities where there were likely to be more large shops opening on a Sunday and therefore most experience of the procedures. Most of the contact was by approximately half-hour telephone conversations. Visits were made to five local authorities to see exactly how the registers are used and maintained. These were chosen in an attempt to coincide the visits with other departmental business (in the case of Newcastle, our other appointments were cancelled, so a planned visit became a telephone conversation).

For further details, please see the attached table which summarises our findings. Although we contacted only 12 local authorities directly, we did ask if officers knew of other local authorities who may have different views. We have no reason to believe that our findings are not truly representative. This was confirmed by a lack of concern from the Local Government Association (see table).

Q6 Please also indicate any other evidence which has led the Department to conclude that registers of Sunday opening hours are not consulted and that maintaining them serves no purpose.

DTI Response

USDAW officers confirmed that they had never consulted the register. The Keep Sunday Special Campaign group, who do not support the proposals on principle, were unable to give any concrete examples of how the register served a useful purpose and did not consult the register themselves.

Q7 Please indicate whether there is any evidence to suggest that registers of Sunday opening hours are used in a systematic way by local authorities or other bodies concerned with the monitoring of Sunday opening hours (e.g. trading standards officers).

DTI Response

There is a wide variety of methods used to maintain the register, ranging from simple ring binder files to storing the data as part of a much larger database (e.g. some Local authorities use “Flare” computer database).

One local authority considers the register useful for checking advertisements in newspapers (although it is not clear how often it is used for this purpose). Another local authority had consulted the register on 6 occasions since its inception in 1994, on four occasions to answer queries from shoppers who wanted to know if a store they wanted to visit in the city centre would be open on a Sunday, twice to confirm to staff that their shop was permitted to open on a Sunday.

DTI does not consider these uses of the register to provide a reason for maintaining it. Advertisements can be checked by simply calculating if the hours are legally permissible. Shoppers can ring the store they wish to visit rather than local authorities. Staff can tell local authorities what hours their store is opening to check their legality, without recourse to the register.

If the size of the store is in question, that matter can only be resolved by checking the retail floor space, whether or not the store has registered its opening hours. (This was not in fact raised as a concern by any of the local authorities we contacted or by other respondents to consultation.)

Q8 Please provide the Department's assessment of the standard to which the present requirement for the maintenance of a register of Sunday trading hours is observed by the relevant local authorities.

DTI Response

From our observations and what we have been told, it appears likely that local authorities do presently have reasonably full and accurate records of hours which large stores have notified to them. We have no way of assessing their adequacy or if hours have changed and not been notified. It is possible that since the 'big bang' change to the process in 1994 the procedures may have been ignored by some stores, however if this has happened, we came across no reason to suppose that this had caused difficulties or illegal opening hours being kept.

Whether the proposal has been the subject of, and takes appropriate account of, adequate consultation (S.O. No. 141(6)(d))

Q9 Please explain how the pre-consultation with local authorities on the use of their registers was conducted; which local authorities or representative bodies were approached; which ones responded, and what were the results of this pre-consultation.

DTI Response

Please see also the answer to question 4 above and attached table.

DTI staff contacted the local authorities listed in the attached table and spoke to officials responsible for Sunday Trading matters, including notification procedures and maintaining registers. The majority of the local authorities saw no purpose in maintaining the registers and volunteered the suggestion that removing this requirement would enable them to put resources into other activities, such as enforcement and health and safety activities. Of the 12 local authorities contacted, only Manchester and Haringey reported that they found the register at all useful:

- Manchester had consulted the register on six occasions since 1994 – four times to answer queries from the public who wanted to go shopping and were enquiring if a particular store were open on a Sunday and twice when retail staff rang in to check if their store were allowed to open on a Sunday (they were open). Despite finding the register useful for answering enquiries from shoppers, Manchester still supported removal of notification procedures.
- Haringey had found the register useful for checking newspaper advertisements – to ensure that shops were advertising legal opening hours. During our telephone conversation, it was not clear if they none the less supported removal of the procedure. Their subsequent letter however did not indicate support as they still considered the register useful for that purpose. DTI considers that the hours during which a large shop can open (up to a maximum of 6 continuous hours between 10am and 6pm) is sufficiently clear to check newspaper advertisements without recourse to a register.

Q10 Please indicate what discussions the Department has had with the Local Government Association concerning the proposed modification of local authority enforcement of Sunday trading, and whether the Association is content with the proposals.

DTI Response

The Local Government Association were contacted by telephone on several occasions. They did not consider it necessary to meet with DTI officials (although a meeting was offered). They were sent the consultation document in writing asking for their views. The LGA decided not to respond formally and told us on the telephone that they were content for its members who dealt with this issue to respond directly to us, if they so wished.

Prior to our own enquiries, an official from the LGA (Education and Social Policy Unit) told Cabinet Office, as a personal view, that he had ‘never seen any benefit from this requirement’ and that ‘it would seem a sensible piece of deregulation for businesses and LAs as Local Authorities have to keep a register which in my own experience is never enquired about or referred to’.

We have no reason to believe that the LGA are concerned by our proposals.

Q11 Please explain the reasons why local authorities were not approached directly for their views during the formal consultation exercise.

DTI Response

We directly approached some 12 local authorities (see attached table) who were likely to have had significant experience of dealing with Sunday Trading Act notifications. We discussed sending the consultation document directly to all local authorities with the Local Government Association and with LACORS, but were advised that this was not necessary. The LGA considered that their newsletter and website were adequate methods of consulting their membership.

Other matters arising from the Committee’s consideration (S.O. No. 141(5))

Q12 Please indicate what discussions the Department has had with the Scottish Executive about the co-ordination of the repeal of section 26 of the Revenue Act 1889 in England and Wales, Scotland and Northern Ireland, should the RRO succeed.

Q13 Please indicate what discussions the Department has had with the Scottish Executive about the co-ordination of the repeal of section 26 of the Revenue Act 1889 in England and Wales, Scotland and Northern Ireland, should the RRO succeed.

Response from HMCE

Background

Repeal for Scotland will follow repeal for the rest of the United Kingdom, should the RRO succeed.

After Customs became aware that section 26 of the Revenue Act was still extant, they made attempts to include repeal within two Westminster Bills. Firstly, they attempted to incorporate the measure within the Finance Bill; however, this method was ultimately rejected by the House Authorities on the grounds that the section did not have any current connection with excise duties and must be regarded as a Sunday trading rather than a revenue matter. Secondly Customs attempted to have the measure incorporated within the ‘Alcohol and Entertainment Licensing Bill’. Again, the House Authorities rejected this as it would have meant extending the nature of the Bill to Sunday trading issues.

In the context of the inability of Customs to progress the matter as part of a scheduled Bill, the Regulatory Reform Order being worked upon by the DTI seemed an appropriate mechanism for achieving the timely repeal of section 26, with the one drawback that separate means would be required for Scotland.

Discussions with the Scottish Executive

Customs first wrote to the Scottish Executive on 13 January 2003, notifying them of the problem caused by section 26 and their desire to incorporate repeal within the Regulatory Reform Order being progressed by DTI. The departments have remained in correspondence since. The Scottish Executive has confirmed that section 26 remains extant for Scotland and that, like Customs, they see it as an antique provision.

Repeal for Scotland requires either primary legislation in the Scottish Parliament or possibly an Order under the Deregulation and Contracting Out Act 1994 (in the case of the latter, the Committee will be aware that the

provision in that Act that would have allowed for repeal has itself been repealed by the Regulatory Reform Act, save as respect orders made by Scottish Ministers in the Scottish Parliament).

The Executive is now considering the options they have for repeal, including the vehicles that might be used and in what timescale this can be achieved.

Local Authority consultation: summary of findings by DTI officials

DTI staff contacted the local authorities listed in the table and spoke to officials responsible for Sunday Trading matters, including notification procedures and maintaining registers. The majority of the local authorities volunteered the suggestion that removing this requirement would enable them to put resources into other activities, such as enforcement and health and safety activities. Of the local authorities above, only Manchester and Haringey reported that they found the register at all useful:

- Manchester had consulted the register on six occasions since 1994 – four times to answer queries from the public who wanted to go shopping and were enquiring if a particular store were open on a Sunday and twice when retail staff rang in to check if their store were allowed to open on a Sunday (they were open). Despite finding the register useful for answering enquiries from shoppers, Manchester still supported removal of notification procedures.
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Other consultation with local authorities:

- Telephone conversations with LACORS in August 2002 and December 2002. LACORS (Local Authorities Co-ordinators & Regulatory Services) reported that this was not a matter of concern to trading standards officers, and that the appropriate organisation for us to contact was the LGA (Local Government Association). However LACORS did put a link to our consultation on their website.
- Telephone conversations with Local Government Association in August 2002, November 2002 and April 2003. No concerns expressed about the loss of the register expressed. LGA advised us that the best way to consult their members would be through their newsletter, asking for views. This was done in co-operation with the LGA, within the consultation period. The LGA thought that a lack of response suggested that their membership had no concerns about losing the register. The LGA saw no need to put in a response as an organisation.

Local Authority consultation – summary of findings by DTI officials

<u>Local Authority</u>	<u>Nature of contact</u>	<u>Register</u>	<u>Consultation of register by public</u>
London Borough of Kingston	Telephone conversation 20 th August 2002	Register maintained	Register had never been consulted by a member of the public to knowledge of officer maintaining register
London Borough of Croydon	Telephone conversation 22 August 2002	Logged on computer	Register had never been consulted by a member of the public to knowledge of officer maintaining register
City & County of Swansea	Telephone conversation 22 August 2002 and visit on 30 August 2002	Kept on computer	No public inspection
Newport City Council	Telephone conversation 23 August 2002 and visit on 30 August 2002	Large ring binder	Register had never been consulted by a member of the public to knowledge of officer maintaining register
Bristol City Council	Visit on 30 August 2002	Notebook listing filed in a ring binder.	Register had never been consulted by a member of the public to knowledge of officer maintaining register
Nuneaton and Bedworth Borough Council	Email sent on 8 October 2002	Stored on file in electronic form	Register had never been consulted by a member of the public to knowledge of officer maintaining register
Liverpool City Council	Visit on 9 December 2002	Proactive computer system	Register had never been consulted by a member of the public to knowledge of officer maintaining register
Manchester City Council	Visit on 9 December 2002	Hardback files	No member of the public has asked to view the register
Newcastle City Council	Telephone conversation March 11 2003	Electronic records	Register had never been consulted by a member of the public to knowledge of officer maintaining register.
London Borough of Merton	Telephone conversation on 19 September 2003	Register maintained	No member of the public has come to view the register
Bromsgrove Borough Council (Birmingham)	Telephone conversation on 19 September 2003	Register Maintained	No member of the public has come to view the register
London Borough of Haringey	Telephone conversation 29 September 2003	Register maintained	Register had never been consulted by a member of the public to knowledge of officer maintaining register

Formal minutes

Tuesday 9 December 2003

Members present:

Mr Peter Pike, in the Chair

Mr Russell Brown
Brian Cotter

Mr Denis Murphy
Brian White

The Committee deliberated.

Draft Report, [Proposal for the Regulatory Reform (Sunday Trading) Order 2004] proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Paragraphs 1 to 58 read and agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House.

[Adjourned till Tuesday 13th January at 9.30 a.m.]

Reports from the Regulatory Reform Committee since 2001

The following reports were published during the 2001-02 Session by the Regulatory Reform Committee under its previous name, the Deregulation and Regulatory Reform Committee.

Session 2001-02

First	Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2001	265
Second	Draft Regulatory Reform (Special Occasions Licensing) Order 2001	388
Third	Draft Deregulation (Disposals of Dwelling-Houses By Local Authorities) Order 2001	449
Fourth	Proposal for the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	583
Fifth	Draft Deregulation (Restaurant Licensing Hours) Order 2002 Draft Deregulation (Bingo and other Gaming) Order 2002 Proposal for the Regulatory Reform (Golden Jubilee Licensing) Order 2002	599
Sixth	Proposal for the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	663
Seventh	Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002 Draft Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	677
Eighth	Proposal for the Regulatory Reform (Carer's Allowance) Order 2002	691
Ninth	Draft Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002 Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	708
Tenth	Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 Draft Regulatory Reform (Carer's Allowance) Order 2002	807
First Special Report	Further report on the Handling of Regulatory Reform Orders	389

The following Reports were published by the Regulatory Reform Committee during the 2001-02 Session under its current name.

Session 2001-02

Eleventh	Draft Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	867
Twelfth	Proposal for the Regulatory Reform (Removal of the 20 Member Limit) Order 2002	1104
Thirteenth	Proposal for the Regulatory Reform (Sugar Beet Research and Education) Order 2003	1247
Fourteenth	Draft Regulatory Reform (Removal of 20 Member Limit in Partnerships Etc.) Order 2002	1303
Second Special Report	The Operation of the Regulatory Reform Act: Government Response to the Committee's First Special Report of Session 2001-02	1029
Third Special Report	The Handling of Regulatory Reform Orders (III)	1272

The following reports were published by the Regulatory Reform Committee during the previous Session of Parliament.

Session 2002-03

First	Proposal for the Regulatory Reform (Credit Unions) Order 2002 Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2002	82
Second	Proposal for the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003	182
Third	Proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	183
Fourth	Draft Regulatory Reform (Special Occasions Licensing) Order 2002	193
Fifth	Proposal for the Regulatory Reform (Housing Management Agreements) Order 2003	328
Sixth	Draft Regulatory Reform (Credit Unions) Order 2003 Draft Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	329
Seventh	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	436
Eighth	Draft Regulatory Reform (Housing Management Agreements) Order 2003	520
Ninth	Proposal for the Regulatory Reform (British Waterways Board) Order 2003	521
Tenth	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	549

Eleventh	Draft Regulatory Reform (Sugar Beet Research and Education) Order 2003	591
Twelfth	Draft Regulatory Reform (British Waterways Board) Order 2003	682
Thirteenth	Proposal for the Regulatory Reform (Gaming Machines) Order 2003	715
Fourteenth	Draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 Draft Regulatory Reform (Gaming Machines) Order 2003	1210
First Special Report	The operation of the Regulatory Reform Act 2001: a progress report	908

All reports are available from The Stationery Office.