



House of Commons
Regulatory Reform Committee

**Government Response
to the Committee's
First Special Report,
Session 2002-03: *The
operation of the
Regulatory Reform Act
2001: a progress
report***

**First Special Report
of Session 2003–04**

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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.

Current membership

Mr Peter Pike (*Labour, Burnley*) (Chairman)
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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), Stuart Deacon (Committee Specialist), Brian Dye (Committee Assistant) and Liz Booth (Secretary).

Contacts

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First Special Report

1. On 28 October 2003 we issued a progress report on the operation of the Regulatory Reform Act 2001, covering the second full year of the Act's operation, from July 2002 to June 2003.¹ The report remarked on procedural issues surrounding the Act's operation and discussed practical arrangements for the handling of regulatory reform orders. We also commented on the slow progress of the Government's programme of regulatory reform order-making to date, and examined ways in which future regulatory reform orders could be identified.
2. In response to our report, the Minister for the Cabinet Office, Mr Douglas Alexander MP, wrote to the Chairman on 19 December 2003. The letter is published as an Appendix to this Report.
3. The Minister noted in his response that he was to chair a seminar on 14 January, where he would take the opportunity to raise awareness of the Regulatory Reform Act among Members. We welcome the Cabinet Office's initiative in arranging this seminar, entitled 'Parliament and Better Regulation', and believe that seminars of this nature are a valuable means of informing colleagues about the order-making process.

¹ First Special Report, *The operation of the Regulatory Reform Act 2001: a progress report*, HC (2002–03) 908

Appendix

Letter from Mr Douglas Alexander MP, Minister for the Cabinet Office, to the Chairman of the Committee

The operation of the Regulatory Reform Act 2001: a progress report: Special Report by the Regulatory Reform Committee

Thank you for your letter of 5 November 2003 enclosing a copy of the Regulatory Reform Committee's report on the progress of the Regulatory Reform Act 2001 (RRA).

Firstly, let me thank you and the Committee for a very helpful and constructive report. We have considered the issues you have raised carefully, and set out below responses to the detailed points made in the report.

Own-Initiative Amendments

I am grateful for your confirmation that such amendments may be possible, if they would improve the working of the order and would not involve changes of principle. Should it be unclear as to whether such a change would necessitate further consultation my officials will contact the Committee for their "without prejudice" advice, but you can be assured that this will not be the norm for all changes. We do not expect this scenario to arise very often. I also appreciate that you will retain the right to withhold such advice, and that the process will be as transparent as possible.

Early Sight of Consultation Responses

I am pleased that your staff found it useful to have early sight of the consultation responses for the Patents and Fire Safety regulatory reform orders (RROs). Although we cannot guarantee being able to do this for all proposals, we will endeavour to do so as far as possible, especially if there are a large number of responses or the proposal itself is large.

Slow Progress on RROs

You have commented on our PSA target and the potential impact on the Committee's workload. I must clarify that the 2002 Spending Review covers the period from 2003-04 to 2005-06 and that, in line with standard practice, we are measuring our performance against the PSA target in financial years. This means we have until April 2006 to "deliver 60 RROs", not December 2005 as mentioned in your report. This still remains a stretching target, but should not result in the Government laying more than the agreed number of proposals in any week. Should we feel this agreement needs reviewing, then we would of course discuss the situation with the Committees in both Houses.

I agree that much of the potential of the regulatory reform procedure is yet to be exploited, and recognise that work needs to be done to tackle this. I attach an annex which contains an action plan of measures intended to raise awareness of the Regulatory Reform Act's (RRA) powers, and increase the flow of RRO proposals coming forward, which I hope you find helpful. The delivery of the first large RRO next year will enable us to demonstrate that major policy issues can be delivered using the RRA. RROs are still relatively new, and you have also expressed your concerns over inexperienced officials working on them. I believe that this is connected both with limited experience of RROs as a whole and also the profile of RROs. The measures I have mentioned in the annex should help to rectify this.

Regretfully, as you point out in your report, several of the proposals we intended to lay by the end of 2003 have not yet come to fruition. There are a number of reasons for this, and one of the proposals (Weights and Measures) is no longer being taken forward via RRO, whilst another (Maritime Employment Disputes) may no longer be necessary. Work is ongoing with the remainder, and we are aiming to have these proposals laid

for scrutiny by April 2004. Overall, our focus remains on delivering outcomes rather than the means of delivery, and only a handful of RRO proposals have been dropped altogether.

Managing the Flow of RROs

Thank you for clarifying the position on the timetabling of RROs. We will ensure that these arrangements are adhered to. I welcome the Committee's willingness to discuss the arrangements should they cause difficulties for the Government's RRO programme in the future.

Identifying Future RROs

I would like to thank the Committee staff for their help in preparing the RRO guidance my officials have been working on. The main guidance will be relaunched in the New Year, and the note on burdens was circulated in the summer. Further guidance on preparing Explanatory Documents and a quick guide to RROs have also been drafted, and will be sent to Committee staff early in the New Year for their comments. The Regulatory Impact Unit (RIU)'s legal advisors will also be preparing brief legal guidance on using RROs to implement EU Directives, and on sub-delegation, which the Committee staff will also see.

I agree that it is preferable that measures suitable for enactment by way of RRO are identified as early as possible in the policy-making process. I can assure the Committee that my officials seek to do this. Measures agreed in the RRO action plan attached are designed to raise the profile of RROs and encourage departments to approach us with fresh ideas at the earliest stages of policy development, rather than automatically waiting to submit a Bill bid.

Seeking Proposals from MPs

I welcome the fact that you are urging Members of Parliament (MPs) to consider making greater use of the RRA. I am chairing a better regulation seminar on 14 January 2004 and will use this as an opportunity to raise awareness of the RRA amongst MPs. I hope a number of the Committee members will be able to attend to give us the benefit of their experience.

Including RROs in Law Commission Reports

My officials are working closely with the Law Commission and colleagues in the Department for Constitutional Affairs in an effort to increase the use of RROs in delivering Commission reports, and will be analysing both existing reports and new work programme suggestions where RROs might be suitable for delivering the reforms.

Quality of Explanatory Statements

As mentioned earlier in this letter, draft guidance on producing Explanatory Documents will be sent to the Committee staff for comments shortly. I appreciate your offer to provide feedback on this, and the quick guide to RROs, which we will also be sending to your staff. This guidance should help to improve the standard of these documents, although the responsibility for this will remain with departments. While my officials in the RIU comment on and clear RRO documentation, they do not have the necessary policy expertise on the specific proposals to take responsibility for drafting the documents. I hope you will agree that their priorities should be to help identify new proposals and guide departments through the RRO procedure.

Review of the Regulatory Reform Act

I note that you agree that insufficient use has been made of the RRA to enable a meaningful review of the Act to be undertaken at this time. When undertaking to report on the RRA after three years, Lord Falconer stated that:

“ I do not think it would be right for such reports to reopen matters of policy which have been debated fully.....but the process – how the system is working – needs to be looked at.”¹

In line with the commitment made to the House, our forthcoming report will be confined to the workings of the Act, and will not seek to reopen policy matters. I would nevertheless like to reassure you that it is my intention that this report in April should be as comprehensive as is possible at this time. Our current thinking is that a more wide-reaching review might begin in the summer of 2005, at which point the Act will have been used more extensively.

However, the exact timing of any review will be subject to developments. In particular, I believe that it will be useful to wait until the larger proposals (Patents, Fire Safety and Civil Registration) have completed before starting such a review, as unforeseen issues may arise due to the size of these reforms. I understand that the House of Lords Sifting Committee has recently been set up to scrutinise the use of forms of secondary legislation other than RROs, and there may also be useful lessons that can be drawn from their findings, which would feed into this review.

Evidence From the Head of the Better Regulation Task Force

I understand that the Committee Clerk is in correspondence with the Task Force Secretariat to discuss a possible evidence session, and what would be expected in any such meeting.

I look forward to continue close co-operation with you and the other members of the Committee on this important work. I am copying this letter to the Prime Minister, members of LP Committee, and Regulatory Reform Ministers.

19 December 2003

Annex - RRO Action Plan

Agreed actions include:

- Analysis of departmental Bill bids to ensure effective use of RROs,
- Promotion of RROs during Better Regulation Seminars for Regulatory Reform Ministers,
- Better Regulation Seminar for MPs highlighting RROs
- Launch of updated Regulatory Reform Action Plan, including reference to major reforms delivered by RRO,
- Measures to incentivise use of RROs including Ministerial letters to officials who have delivered significant RROs, and,
- New commitments, highlighted in the Budget in April 2003, for departmental annual reporting on better regulation, and on-going work to link such performance to the Spending Round.
- Policy training and awareness raising measures including:
 - Seminars for policy officials
 - Updated guidance and templates on RROs
 - “Wash-up” and review sessions for all relevant departments aimed at identifying lessons from proposals delivered so far, and resolving any outstanding issues with proposals in the pipeline
- Legal training and awareness raising measures including:

¹ Hansard, 13 February 2001: Column 216

- Proposals for establishing a network of “legal experts” in all relevant departments, and
- Ongoing training events and updated legal guidance.

References to RROs in the recent Queen’s Speech and the highlighting of measures delivered by RRO in the Chancellor’s Pre-Budget Report are also examples of the Government’s commitment to promoting the effective use of RROs.

