



House of Commons
Regulatory Reform Committee

**Government Response
to the Committee's
First Special Report of
Session 2005–06:
Legislative and
Regulatory Reform Bill**

**Second Special Report of Session
2005–06**

*Ordered by The House of Commons
to be printed 21st March 2006*

HC 1004
Published on 23rd March 2006
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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

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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/regrefcom

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

Committee staff

The current staff of the Committee are Mick Hillyard (Clerk), Stuart Deacon (Committee Specialist) and Liz Booth (Secretary).

Contacts

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Second Special Report

On 6 February 2006, we published our First Special Report of the current session, Legislative and Regulatory Reform Bill, as House of Commons paper No. 878. On 27 February we received the response from the Cabinet Office (dated 24 February 2006). On 28 February, the Chairman requested by means of a starred written question that the Government's response be placed in the Library.

Appendix

Letter from Mr Jim Murphy MP, Minister for the Cabinet Office, to the Chairman of the Committee

Response to the Regulatory Reform Committee's First Special Report of Session 2005-06

I am writing in response to the Regulatory Reform Committee's First Special Report of Session 2005-2006 about the Legislative and Regulatory Reform Bill.

As you know, the Bill will:

- Make it quicker and easier to remove or reform out-dated, unnecessary or over-complicated legislation (including gold-plating), and so create a better regulatory environment.
- Help bring about a risk-based approach to regulation by requiring certain regulators to have regard to the Better Regulation Commissions' five principles of good regulation.
- Reduce the amount of bureaucracy around the implementation of European Community law in the UK, and make it easier for the regulated to understand and apply UK legislation which implements Community law.

I would like to thank the Committee for its on-going scrutiny and the support they have expressed for the overall objectives of the Bill. I would also like to thank the Committee for the opportunity they gave myself and officials to present evidence to them on Tuesday 13th December 2005.

The report itself provides both useful detail to facilitate discussion during the Bills passage through both Houses of Parliament as well as specific recommendations. It is to these - at Annex A - I look to address in this, my initial response.

24 February 2006

ANNEX A

Recommendation 1

The Cabinet Office should carry out post-implementation reviews of the costs and benefits estimated for each RRO, feeding the findings in to a review of the Regulatory Impact Assessment (RIA) process.

As with RIAs, post-implementation reviews need to be proportionate to the impact of the policy. The Cabinet Office encourages Departments to carry out post-implementation reviews of the estimated costs and benefits contained in RIAs. Departments are currently reviewing their regulations and drafting simplification plans, which include measures to reduce administrative burdens on business, and will be published by PBR 2006. Guidance on RIAs was updated last year to emphasise the importance of post-implementation review.

Recommendation 2

Departments should be assessed on their progress in removing unnecessary regulations and controls and not simply on their progress in simplifying measures.

Measures to simplify include measures to remove unnecessary controls, whether these controls are contained in legislation or elsewhere. There will be a requirement for the plans departments are publishing by PBR 2006

to be revised annually. The Panel for Regulatory Accountability (PRA) has been established to hold departments to account for their regulatory performance. It scrutinises all new regulatory proposals that impose a significant cost on business. In doing so it provides a rigorous mechanism through which the flow of new regulations is reduced, and through which the quality of the regulations that it approves is enhanced. The Better Regulation Commission will also work with the PRA in scrutinising simplification plans.

Recommendation 3

All responses to the consultation on the Bill should be published on the BRE website.

The BRE will publish all non-confidential consultation responses on its website.

Recommendations 4 and 5

Following the precedent of the Scotland Act 1998, order-making powers should be prohibited from reforming specified areas (e.g. defence, Parliament).

The Bill should allow Parliament to:

- i) veto the delivery of individual proposals by order; and**
- ii) prevent the Government from reintroducing an order to address this policy problem for two years after the veto.**

We acknowledge the concerns expressed by the Committee and others regarding the breadth of the powers contained within Part 1 of the Bill.

We have learnt the lessons from the 2001 Act, and the Bill provides a flexible power to effectively deliver better regulation. The better regulation aims in Clause 12 give an indication of the intended use of the power.

There are a number of safeguards which ensure that the order-making power will be used appropriately, such as the general conditions and the topic specific restrictions on the order-making powers. There are also procedural safeguards that flow from the requirements for consultation, an explanatory document and Parliamentary scrutiny.

Additionally, we have re-iterated two commitments - that highly controversial proposals are not appropriate for delivery by order, and that the Government will not force an order through in the face of opposition from the Parliamentary Scrutiny Committees, effectively giving the Committees a veto over individual orders.

Important substantive safeguards come from the preconditions in clause 3.

Where the Minister makes an order either reforming the law (other than restating legislation) or amending or abolishing the common law he must consider that the following conditions (where relevant) are satisfied:

- There are no non-legislative solutions which will satisfactorily remedy the difficulty which the order is intended to address
- The effect of the order is proportionate to the policy objective;
- The order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- The order does not remove any necessary protection;
- The order does not prevent anyone from continuing to exercise any rights or freedoms which they might reasonably expect to continue to exercise.

Where the Minister makes an order that restates legislation or codifies the common law then he must only make an order where he considers that it would make the law more accessible or more easily understood. "Restating" legislation means replacing the legislation with alterations only of form or arrangement. Removing an ambiguity is not restating legislation for these purposes.

The preconditions on satisfactoriness and proportionality derive from better regulation policy. Legislation should not be made unless it is necessary to deal in a satisfactory way with the difficulty which it is intended to address, and legislation should not go further than is needed to remedy the problem which it is intended to address.

A number of topic specific restrictions also apply to the order-making powers, ensuring that orders cannot create criminal penalties or authorize forcible entry, search or seizure, or compel the giving of evidence inappropriately. In addition to the topic specific restrictions carried forward from the 2001 Act, a new restriction has been added, so that orders cannot create or increase taxation.

As the Bill enters Committee Stage, the Government will listen carefully to the views of Parliament and seek its support in achieving the right balance between powers and protections.

Recommendation 6

The Committees should have the power to suggest amendments to super-affirmative orders, so that if both Houses agreed to the amendments, the orders could only be made if the amendments were accepted.

The Parliamentary Committees that examine orders made by super-affirmative procedure under the 2001 Act can propose amendments. Whilst the Government can take a view on whether to accept the amendments it would like to avoid a situation where an entire order is lost on the basis of a single amendment; in practice Departments have usually accepted recommendations in Committee reports.

For example, the Delegated Powers and Regulatory Reform Committee (DPRRC) questioned the proposal under the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 to amend a provision in the Landlord and Tenant Act 1954. The Act allowed landlords and tenants to agree a lease which excluded security of tenure, as long as both parties agreed and the court approved the lease. The RRO proposed that the process of court approval be downgraded. The DPRRC were not satisfied that sufficient evidence had been provided to justify downgrading the process, and were specifically concerned that the proposal might not maintain necessary protections for tenants. The department undertook further research and subsequently the concerns of the Committee were allayed and the RRO was subsequently successfully made. This example demonstrates both the effectiveness of Parliamentary scrutiny and the way that the conditions act as a restriction on the order-making power.

Recommendation 7 - 10

The Bill should provide for more Parliamentary scrutiny of orders, so that either:

- i) Committees have 30 days rather than 21 days to decide whether an order should undergo negative, affirmative or super-affirmative procedure; and following this 30 days, Parliament should have up to 30 further days to scrutinise orders;
- ii) No orders should undergo negative procedure; Parliament should have 60 days to either decide whether an order should undergo affirmative or super-affirmative procedure, or to scrutinise orders; and Parliament should have up to 30 further days to scrutinise orders; or
- iii) No orders should undergo negative procedure; orders should undergo super-affirmative procedure by default; Parliament should have 60 days to either decide whether an order should undergo affirmative or super-affirmative procedure, or to scrutinise orders; and Parliament should have up to 30 further days to scrutinise orders.

We welcome the Regulatory Reform Committee's recognition of the rationale behind our proposals on procedures. These are practical suggestions and we will consider them carefully. The most important thing about procedures is that they should work well. The Government values the Committee's expertise in this area and will consult with stakeholders as the Bill receives scrutiny during its Parliamentary passage.

Recommendation 11

An additional option to those detailed in the Bills Regulatory Impact Assessment which leaves the outer limit on coverage unspecified while identifying areas that should be off limits, as not appropriate for delegated legislation, and also tightening aspects of Parliamentary control.

We welcome the RRC's continued constructive approach and its recognition of the need for a flexible order making power capable of removing unnecessary regulation, and the fact that its recommendations are designed to "leave the outer limit on coverage (of the order-making power) unspecified while identifying areas that should be off limits, as not appropriate for delegated legislation, and also tightening aspects of Parliamentary control", but without altering the fundamental structure of the Bill. The Government will consider the RRC's recommendations carefully, and the RIA will be updated as necessary if substantive changes are made to the Bill.

Recommendations 12

Changes should be made to the standing orders setting the RRC's terms of reference, so that the RRC can:

- i) assess proposals in terms of the new preconditions for orders
- ii) conduct inquiries on the wider better regulation
- iii) forbid for 2 years the laying of an order which has been vetoed by the Committee
- iv) trigger debates if the Committee believes an order is of political or legal importance
- v) be given extra resources to deal with the increased flow of orders

Appropriate changes may be required to Standing Orders to enable delivery by the legislative framework put in place. We believe the new Standing Order should generally replicate the principle of the current one, namely that the Standing Orders reflect the conditions on the order-making power. Resources are a matter for the House, but we recognise the potential resource implications and would want to see a scrutiny process that is as effective as possible.

As the amendment of Standing Orders ultimately rests with the House Authorities we will liaise with them and the Committee as necessary to ensure that Standing Orders appropriate for the scrutiny and delivery of the intended flow of Orders under the new powers are in place. Any changes necessary will be discussed when the Bill has progressed.

Specifically with regard to Recommendation 13, we welcome the agreement in principle that has been given to widen the Terms of Reference of the Committee. A wider remit for the RRC would also allow the Committee to contribute to further progressing the Better Regulation Agenda.