



House of Commons  
Regulatory Reform Committee

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# Draft Regulatory Reform (Forestry) Order 2006

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**Third Report of Session 2005–06**

*Report, together with formal minutes*

*Ordered by The House of Commons  
to be printed 31st January 2006*

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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

Andrew Miller (*Labour, Ellesmere Port & Neston*) (Chairman)  
Gordon Banks (*Labour, Ochil and South Perthshire*)  
Mr James Gray (*Conservative, North Wiltshire*)  
Stephen Hammond (*Conservative, Wimbledon*)  
John Hemming (*Liberal Democrat, Birmingham, Yardley*)  
Mrs Sharon Hodgson (*Labour, Gateshead East & Washington West*)  
Mr Stewart Jackson (*Conservative, Peterborough*)  
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)  
Mr Jamie Reed (*Labour, Copeland*)  
Bob Russell (*Liberal Democrat, Colchester*)  
Alison Seabeck (*Labour, Plymouth, Devonport*)  
Mr Andrew Slaughter (*Labour, Ealing, Acton & Shepherd's Bush*)  
Ms Angela C Smith (*Labour, Sheffield, Hillsborough*)  
Mr Anthony Steen (*Conservative, Totnes*)

### 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](http://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](http://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

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Delegated Legislation Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is [regrefcom@parliament.uk](mailto:regrefcom@parliament.uk).

# Contents

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<b>Report</b>	<i>Page</i>
<b>Report under Standing Order No. 141</b>	<b>3</b>
<b>1 Introduction</b>	<b>3</b>
<b>2 The report on the proposal</b>	<b>4</b>
<b>3 Other representations made on the proposal</b>	<b>5</b>
The House of Lords Select Committee on Delegated Powers and Regulatory Reform	5
<b>4 Recommendation</b>	<b>5</b>
<b>Formal minutes</b>	<b>6</b>
<b>Reports from the Regulatory Reform Committee in the previous and present Session</b>	
	<i>inside back cover</i>



# Report under Standing Order No. 141

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The Regulatory Reform Committee has examined the draft Regulatory Reform (Forestry) Order 2006 in accordance with Standing Order No. 141. We recommend unanimously that the Order be approved.

## 1 Introduction

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1. The proposal for the draft Regulatory Reform (Forestry) Order 2006 was laid before the House by the Secretary of State for Environment, Food and Rural Affairs on 19 July 2005. The purpose of the draft Order is to provide the Forestry Commissioners with new powers which the Government considers will enable them to better carry out their duties under statute and in relation to objectives set for them by ministers with responsibility for forestry in England and Wales and Scotland. The draft Order would give to the Commissioners new power to form or participate in forming companies or charitable trusts. This would make it possible for them to enter into joint ventures with commercial and public sector partners to provide improved recreational, sporting and tourist facilities for the public on the state-owned forest estates which they manage. The draft Order would also give to the Commissioners a power to enter into arrangements with other persons and bodies, delegating to them their existing power to levy charges under the Countryside Act 1968 for the use of these recreational facilities in the publicly-owned forests to other persons. The ability to take part in joint ventures would also be supplemented by a new power for the Commissioners to exploit commercially intellectual property rights which arise from research activities they undertake.

2. The second element of the draft Order takes the form of provision to endow the Commissioners with enhanced powers to require remedial action following the unlawful felling of trees. It is proposed to repeal the existing requirement of the Forestry Act 1967 (“the 1967 Act”) that a person may only be served with a notice requiring them to restock felled trees where that person has first been convicted of unlawful felling of those trees under that Act and replace it with a power to require restocking without the requirement of prior conviction. The Commissioners would also be empowered to take enforcement action for breach of requirements imposed by felling licences against the original applicant for the licence rather than, as now, only against the freeholder of the land on which felled trees had been growing.

3. With the exception of the intellectual property rights provision (which also applies in relation to Scotland), the measures in the draft Order would apply to England and Wales only. Intellectual property is a reserved matter under the Scotland Act 1998.

4. The Government laid the draft Order before Parliament on 23 January 2006, together with an explanatory memorandum prepared by the Forestry Commissioners.<sup>1</sup>

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<sup>1</sup> Copies of the draft Order and explanatory memorandum are available to Members of Parliament from the Vote Office and to members of the public from the Forestry Commissioners website at [www.forestry.gov.uk](http://www.forestry.gov.uk)

5. The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible minister has had regard to any report or resolution of the Committee or to any other representations made during the period for Parliamentary consideration.<sup>2</sup> Our discussion of matters arising from our consideration is set out below.

## 2 The report on the proposal

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6. We made our report to the House on the proposal for the Order on 29 November 2005. Our conclusion was that a draft Order in the form of the proposal should be laid before the House.<sup>3</sup>

7. In reporting on the proposal, we also made two requests, one of the Forestry Commissioners themselves and another of the Secretary of State.

8. First, we requested that the Forestry Commissioners formally commit themselves to a policy of affordable pricing for facilities which they or their partners develop and that the form of future commercial partnership agreements should specifically reflect that commitment. In response, the Commissioners have affirmed a commitment to ensuring that there is affordable access to forestry facilities for all members of the public.<sup>4</sup> They consider that this commitment to affordability is secured through their policy of setting charges in accordance with the market. The Commissioners have also stated that, in entering into arrangements for the provision of facilities with commercial partners, it was their intention that specific provision in the legal documentation would prevent the setting of charges at unreasonable rates, and not beyond the level of the market. **We welcome this.**

9. Secondly, we requested that the Secretary of State should consider whether there would be merit in providing that appeals made against restocking notices served by the Commissioners on persons under their powers in section 17B of the Forestry Act 1967 should be heard not as now by the responsible minister, but in the Magistrates Courts. We made this request as it seemed to us that, where various agencies of the Crown (though not the same person) had power to conclude that the offence of unlawful felling had occurred, on that basis serve a compulsory restocking notice on the person believed to have liability for remedial works, and then to judge whether any appeal made against that notice should be upheld, such a situation could give rise to perceptions of inequity. Although we did not believe there was any reason to suppose that those presently involved in the appeals process in any way failed to discharge their responsibilities fairly, we were concerned that if, as was intended, greater use was made of the enforcement power once, as the draft Order provides, conviction for unlawfully felling trees was no longer a pre-condition for the use

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2 Standing Order No. 141(7)

3 First Report from the Regulatory Reform Committee of session 2005-06, *Proposal for the Regulatory Reform (Forestry) Order 2006*, HC 729. Copies of this report, which contains our substantive analysis of the Order's provisions and our assessment of how it meets the requirements of the Regulatory Reform Act, are available to Members of Parliament from the Vote Office and to members of the public from our webpage at:

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmdereg/729/72902.htm>

4 Explanatory memorandum on the draft Order, paragraph 52

of that power, the public might be reassured if the power was in the hands of the courts, rather than exercisable by government officials or statutory office-holders (as the Forestry Commissioners themselves are).

10. The Explanatory memorandum on the draft Order records that the Secretary of State has considered our request and concluded that the appeals process is used extremely rarely, and that there is no reason to believe it would not remain a reasonable and proportionate system in the context of the reforms which the draft Order would introduce.<sup>5</sup> However, the Secretary of State also agreed that it would be necessary for the public to have confidence in the appeals process and therefore that it would be appropriate to keep the operation of the process under review and to consider additional reforms, particularly if the number of appeals were to increase significantly. **We welcome this statement.**

11. **We are satisfied that the Secretary of State has had due regard to our previous report on the proposal for this draft Order.**

## 3 Other representations made on the proposal

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### The House of Lords Select Committee on Delegated Powers and Regulatory Reform

12. The Delegated Powers and Regulatory Reform Committee issued its report on the proposal on 23 November 2005.<sup>6</sup> The Committee considered that the proposed Order amounted to an appropriate use of the Regulatory Reform Act and that the requirements of the Act were fully met.

13. The Department states that no other representations were received on the proposal.

## 4 Recommendation

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14. **In accordance with Standing Order No. 141(15), we recommend unanimously that the draft Order be approved.**

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5 Explanatory memorandum, paragraphs 48-50

6 *Eighth Report from the House of Lords' Select Committee on Delegated Powers and Regulatory Reform, session 2005-06, HL 74*<http://www.publications.parliament.uk/pa/ld200506/ldselect/lddelreg/74/7402.htm>

## Formal minutes

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**Tuesday 31 January 2006**

Members present:

Andrew Miller, in the Chair

John Hemming  
Dr Doug Naysmith  
Bob Russell

Alison Seabeck  
Mr Andrew Slaughter  
Ms Angela C Smith

The Committee deliberated.

Draft Report [Draft Regulatory Reform (Forestry) Order 2006], proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 14 read and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

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

[Adjourned till a day and time to be fixed by the Chairman.]

## Reports from the Regulatory Reform Committee in the last Session of Parliament

### Session 2004-05

First	Proposal for the Regulatory Reform (Joint Nature Conservation Committee) Order 2005	117
Second	Proposal for the Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004	118
Third	Proposal for the Regulatory Reform (Prison Officers) (Industrial Action) Order 2004	148
Fourth	Draft Regulatory Reform (Joint Nature Conservation Committee) Order 2005	270
Fifth	Draft Regulatory Reform (Prison Officers) (Industrial Action) Order 2005	271
Sixth	Draft Regulatory Reform (Trading Stamps) Order 2005	272
First Special	Operation of the Regulatory Reform Act 2001	273
Seventh	Draft Regulatory Reform (Execution of Deeds and Documents) Order 2005	429
Eighth	Draft Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005	430
Ninth	Draft Regulatory Reform (Fire Safety) Order 2005	495
Second Special	Government Response to the Committee's First Special Report of Session 2004-05: Operation of the Regulatory Reform Act 2001	431

All reports are available from The Stationery Office.

## Reports from the Regulatory Reform Committee in the present Session of Parliament

### Session 2005-06

First	Proposal for the Regulatory Reform (Forestry) Order 2006	729
First Special	Legislative and Regulatory Reform Bill	878
Second	Proposal for the Regulatory Reform (Public Service Vehicles) Order 2006	879