



House of Commons
Regulatory Reform Committee

**Revised Standing
Orders**

**Second Special Report of Session
2006–07**

*Report, together with formal minutes and
written evidence*

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The Regulatory Reform Committee

The Regulatory Reform Committee is appointed under Standing Order No. 141 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*)
Lorely Burt (*Liberal Democrat, Solihull*)
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*)
Alison Seabeck (*Labour, Plymouth, Devonport*)
Mr Andrew Slaughter (*Labour, Ealing, Acton & Shepherd’s Bush*)
Ms Angela C Smith (*Labour/Co-operative, Sheffield, Hillsborough*)
Mr Anthony Steen (*Conservative, Totnes*)

Criteria against which the Committee considers each proposal

Paragraph (6) of Standing Order No.141 requires us to consider any proposal for a regulatory reform order against the following criteria:

... whether the proposal—

- (a) appears to make an inappropriate use of delegated legislation;
- (b) removes or reduces a burden or the authorisation or requirement of a burden;
- (c) continues any necessary protection;
- (d) has been the subject of, and takes appropriate account of, adequate consultation;
- (e) imposes a charge on the public revenues or contains provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (f) purports to have retrospective effect;
- (g) gives rise to doubts whether it is *intra vires*;
- (h) requires elucidation, is not written in plain English or appears to be defectively drafted;
- (i) appears to be incompatible with any obligation resulting from membership of the European Union;
- (j) prevents any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (k) satisfies the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Regulatory Reform Act 2001;
- (l) satisfies the test of desirability set out in section 3(2)(b) of the 2001 Act;
- (m) has been the subject of, and takes appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation; or
- (n) includes provisions to be designated in the draft order as subordinate provisions.



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/Committee Assistant).

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Report

Introduction

1. On 30 October 2006, the Government published its first draft of the Standing Orders to govern the scrutiny of draft Legislative and Regulatory Orders that will be laid under the Legislative and Regulatory Reform Act (LRRRA) 2006. We published our views on the Government's draft in our special report on 15 December 2006.¹ The Government's response to that special report was provided by Pat McFadden, the Parliamentary Secretary, Cabinet Office, in his letter (dated 25 January). Annexed to that letter was a further revised version of the draft Standing Orders. The letter and revised version for the draft Standing Orders are reproduced as Appendix A. In addition to publishing the Government's response, we have decided to publish another substantive special report, to record the progress that has been made in agreeing new Standing Orders and to welcome the Minister's willingness to accept a number of our previous recommendations for amending his initial draft of the new Standing Orders. However, despite this progress, we also need to report some remaining concerns we have about certain aspects of the latest version of the draft Standing Orders. We set out our views below.

2. Annex 1 shows how we would like the Minister's latest version of the Standing Orders to be amended. Annex 2 graphically illustrates the proposed procedures for scrutinising draft Orders which are consistent with the LRRRA in the form in which we as would like to see them.

Provisions to facilitate debates

3. In our previous special report we recommended that the draft Standing Orders be amended to provide us with the power to refer any draft Order for debate in a Delegated Legislation Committee.² We requested this provision in order to provide all Members with an opportunity to consider a draft Order that we considered warranted such scrutiny because of its political or legal significance. What we had in mind was a provision which would bite only where we unanimously approved a draft Order but still felt wider consideration by all Members was warranted. In the absence of such a power, the alternative would be for us to contrive a division on a draft Order simply to force a debate, in circumstances where we would otherwise approve it unanimously. We would prefer not to have to do this. Our recommendation for such a power was supported by the Procedure Committee.³ In response, the Minister said that he could not agree to this recommendation, but said that our request for wider consideration of a draft Order would be considered "positively" by the usual channels and that this commitment would be

1 Regulatory Reform Committee, First Special Report of Session 2006–07, *Scrutiny of Regulatory Reform Orders*, HC 160

2 Under the existing Standing Orders, a debate on a draft Order is required only if the Government tables a motion to approve a draft Order which we had previously approved following a division or where we had recommended that no further proceedings be taken.

3 Appendix B

“underpinned” in the Standing Orders by the inclusion of a specific option providing for us to recommend such a debate.⁴

4. In our view, these concessions do not go far enough. We consider that such a specific provision for us to merely make a recommendation for a debate on a draft Order which has no automatic procedural consequences would add nothing to what we are already able to do, as we demonstrated when reporting on the Fire Safety Regulatory Reform Order.⁵ We note that the Chairman of the Procedure Committee also questions the benefit of including such a provision in the Standing Orders where there are no procedural consequences.⁶ In our view, there are compelling reasons for allowing us, if warranted, to refer for debate a draft Order that we approve unanimously. For example, the distinctive feature of any draft Regulatory Reform Order is that Ministers are able substantively to amend or repeal primary legislation where there is otherwise no specific power in the provision(s) in question to allow changes to them to be made. As the Committee charged by the House to scrutinise such proposed changes in legislation, we should be able to decide whether such changes warrant wider consideration. As we said in our special report:

the RRO process suffers a particular weakness, namely the lack of opportunities for other Members of the House to debate Orders that amend primary legislation that can potentially affect their own constituents.

5. We reinforce our earlier recommendation that we should have the power to refer draft Orders to debate if we consider they warrant wider consideration, regardless of whether or not we divide. We recommend that the following text be included in the Standing Orders:

(4) In relation to every draft Order laid under section 14 of the Act subject to the negative or affirmative procedure under sections 16 or 17 of the Act, the committee shall report its recommendation whether the draft Order should be made (in the case of the negative procedure) or approved (in the case of the affirmative procedure), indicating in the case of the latter whether the recommendation was agreed –

(a) without either a division or a recommendation that the draft Order should be debated;

(b) without a division but with a recommendation that the draft Order should be debated; or

(c) after a division.

6. If our recommendation above is not accepted, we recommend that the Government clarifies precisely what “unusual circumstances” could justify its refusal for such a

4 See Letter dated 7 December 2006.

5 Regulatory Reform Committee, Eleventh Report of Session 2003-04, *Proposal for the Regulatory Reform (Fire Safety) Order 2004*, HC 684

6 Ev (letter dated 1 February 2007)

debate. Moreover, we see no benefit in a specific provision to recommend a debate that does not also trigger procedural consequences.⁷

Overturing our opposition to a draft Order

7. In his response to our special report, the Minister reiterates the Government's undertaking that it would not force through a draft Order in the face of opposition from the relevant Committees. We welcome this. The initial version of the proposed Standing Orders, however, included provisions setting out how the Committee's veto could be overturned. Although we raised no objections in our special report to the inclusion of such provisions, the Procedure Committee disagreed with the inclusion and commented:

We ... understand that the Government has undertaken that it will not seek to overturn a statutory veto. It therefore seems to us that it is unnecessary to make this special provision, and that to do so risks sending the wrong signals about the Government's intentions. It may be hard to argue convincingly that you have no intention of overturning a veto when you have introduced a new provision specifically to enable you to do it.⁸

8. The Minister now agrees that there is no need for detailed procedures for overturning a Committee veto to be included in the Standing Orders. This takes account of the Government's undertaking not to proceed in the face of opposition by a Committee and because the House always retains the power and the right to overturn a Committee veto. **We welcome the removal of the detailed provisions relating to the over-turning of a Committee veto.**

9. During informal discussions at official level with the Cabinet Office, it became clear that it would be useful if our opposition to a draft Order could be expressed in one of two ways: either as a formal veto or as an adverse report which does not engage a formal veto. It might be useful if we set out how we envisage the distinction operating in practice.

10. If we formally veto a draft Order this could – for example – be because the instrument and the policy area are entirely inappropriate for delegated legislation or would in our judgement inevitably lead to the loss of important protections or freedoms. On this basis it would be highly unlikely that we could be persuaded to withdraw our opposition to the particular draft Order or to anything similar.⁹

11. If, on the other hand, we express opposition to (but do not veto) a draft Order then it would suggest the possibility that our opposition could be withdrawn if provided with further evidence. This option would allow us to register our opposition to a draft Order in a way that does not close down the possibility of any further exchanges (even if doing so might put us beyond the time limit for a statutory veto), should the Government wish to

7 The procedural consequences are set in the proposed version Order 18.

8 Letter from the Chairman of the Procedure Committee to Pat McFadden (dated 7 December 2006), Regulatory Reform Committee, First Special Report of Session 2006-07, Appendix C.

9 A "veto" which engages the statutory provisions of the 2006 Act is a recommendation made under the terms of sections 16(4), 17(3), 18(5) or 18(9).

pursue further dialogue about its draft Order; it would also indicate the possibility that, even if opposition were not withdrawn, we might come to approve a replacement draft Order in the same area of policy or with similar aims and purposes.

12. If we decide to express our opposition to Parliamentary approval of a draft Order without invoking the statutory veto, future progress on making an Order could only be achieved if: (a) we subsequently withdrew our opposition, or (b) the Government breached its undertaking not to force a draft Order though in the face of opposition from the relevant Committees. The procedural consequences are set out in Annex 2.

13. As noted above, we welcome the removal of the detailed provisions relating to the overturning of a Committee veto. In the interests of clarity we recommend that the provisions for allowing the House to disagree with our opposition to a draft Order (including those subject to a negative resolution procedure), where this opposition is not expressed as a formal veto, should be simplified. The particular provisions for triggering a reference of a negative resolution draft order to a delegated legislation committee seem to us confusing and unnecessary.¹⁰ While we note that the current “long stop” provision of the current Standing Order No. 18 to allow for a final appeal to the House as a whole has never been invoked since 1994, and seems unlikely to be used except in very limited circumstances in the future, we are content to accede to the Government’s wish to retain it. **We therefore recommend that the relevant paragraph of the proposed new Standing Order No. 18 read as follows:**

(2) If the committee has recommended under paragraphs (4) or (6) of Standing Order No.141 that a draft Order be not made (in the case of the negative procedure) or be not approved (in the case of the affirmative or super-affirmative procedure), has reported and that the recommendation is not intended to operate section 16(4), 17(3) or (as the case may be) 18(5) or (9) of the Legislative and Regulatory Reform Act 2006:-

(a) no Order in the terms of the draft Order, or

(b) motion to approve the draft Order,

shall be made unless the House has previously resolved to disagree with the committee’s report.

(3) Any questions necessary to dispose of proceedings on a motion for a resolution pursuant to paragraph (2) to disagree with the report of the committee shall be put not later than three hours after their commencement; and the question on any motion thereafter made by a Minister of the Crown that the draft Order, if subject to the affirmative or super-affirmative procedure, be approved shall be put forthwith.

¹⁰ This suggestion that a Committee rejection of a draft Order (subject to the negative resolution procedure) be treated in a similar way to a prayer is potentially misleading if viewed as a procedure for overturning our opposition to a draft Order. A prayer is an attempt to overturn existing regulations which only becomes effective if the motion to annul the regulations is approved. In contrast, our opposition to a draft Order (including those subject to a negative resolution procedure) would be decisive and all further proceedings on that the draft Order would cease. Period. Proceedings could only then be revived if the Committee’s recommendation opposing the draft Order were subsequently overturned by a resolution of the House, which as the Minister reiterates in his letter, the Government would not do.

14. Finally, on the issue of debates, we are pleased to record that the Minister has accepted that, should we divide on a draft Order, the Minister's motion to approve an Order would be taken on the floor of the House; this point was supported by the Procedure Committee.

To allow Subordinate Provisions Orders to be scrutinised

15. In our special report, we recommended that any future Subordinate Provisions Orders that derive from the Regulatory Reform Orders that were laid under the Regulatory Reform Act 2001 Act should continue to be scrutinised in the Commons by us and not, as was initially proposed by the Cabinet Office, transferred to the Joint Committee on Statutory Instruments (JCSI). We took this position for the principal reason that we, unlike the JCSI, have the power to express an opinion on whether a Subordinate Provisions Order be annulled (in the case of the Order being subject to the negative resolution procedure) or not approved (for Orders subject to the affirmative resolution procedure). We were pleased to note that our position was also supported by the JCSI. **We welcome the Minister's acceptance of our recommendation that such Subordinate Provisions Orders continue to be scrutinised by our Committee.**

To amend the criteria

16. In our special report we recommended that the wording in proposed Standing Order No. 141(3)(b) and (c) (the scrutiny criteria) be changed from the subjective to the more objective, which we argued had the added advantage of providing a better match with the tests set out in the Act. **We are pleased to note that Minister's further revised version of Standing Orders 141(3)(b) and (c) has incorporated our recommendation.**

To increase the 15 days limit for the second stage report

17. Under our existing Standing Orders, we are required to provide a (second stage) report on a draft Order within 15 sitting days of the draft Order being laid (excluding days when either House is adjourned for more than four days). In our special report we commented that this should not be a problem when no new second stage issues arise, but we envisaged possible problems of complying with this 15 day deadline if a draft Order is revised in unexpected ways. We said that we intended to report on such draft Orders as promptly as was reasonably possible and that the Standing Orders should be amended accordingly. In response, the Minister agrees to increase the period for the second stage scrutiny to 25 days for revised draft Orders. **We welcome the extra time available for the second stage scrutiny of revised draft Orders.**

Giving Departments the opportunity to give evidence at every stage

18. In our special report we asked for the proposed Standing Order No. 141(13) (now 141(14)) to be deleted on the ground that it seemed to require us to give departments an opportunity to provide oral or written evidence before reporting at every stage of the scrutiny process and that this instruction could prove to be very bureaucratic and expose us to the risk of breaching some of the time limits laid down in the Legislative and Regulatory Reform Act 2006. We recommended that the proposed Standing Order No. 141(13) be deleted to remove this potential risk. The Minister has not agreed with our

recommendation. Instead, he proposes to amend slightly the existing provision by inserting the words “a reasonable” before the word “opportunity”. While we recognise the Minister’s interest in finding agreement on this, we consider this latest revision does not go far enough to the extent that it still leaves us potentially vulnerable to a breach of a statutory time limit. **We reaffirm our earlier recommendation that the provision should be deleted. If this is not acceptable, we would recommend the following wording:**

(14) It shall be an instruction to the committee that before reporting on a draft Order it shall afford to any government department concerned an opportunity of furnishing orally or in writing to it or to the sub-committee appointed by it such explanations as the department think fit, except to the extent that the committee considers that it is not reasonably practicable to do so without risking the opportunity for effective exercise of a function conferred by section 15, 16, 17 or 18 of the Act on a committee charged with reporting on a draft order.

Review of the 2006 Act

19. In our special Report we recommended that the working of the Legislative and Regulatory Reform Act 2006 be reviewed within three years and that the review include a genuine validation of any costs and benefits or Regulatory Impact Assessments that are produced in support of all draft Orders. **The Minister gives a commitment that a review would be undertaken within five years. We welcome this.**

Conclusion

20. We welcome the way in which the Minister has sought to find agreement on the various issues and note that together we have made a great deal of progress. However, as our comments above demonstrate, we consider there are still a number of differences between our recommendations and those suggested by the Minister, which we would like to see resolved.

Annex 1

Amended Standing Orders

Consideration of Regulatory Reform Orders

(Showing our recommended **additions** and ~~deletions~~ to the Minister's Further Revised draft Standing Orders)¹¹

18.—(1) If the Regulatory Reform Committee has recommended under paragraphs (4) or (6) of Standing Order No. 141 (Regulatory Reform Committee) that a draft Order ~~subject to the affirmative or super-affirmative procedure~~, laid before the House under Part 1 of the Legislative and Regulatory Reform Act 2006, should proceed and a motion is made by a Minister of the Crown to that effect, ~~the question thereon shall:~~ **following procedures shall apply:**

(a) if the committee's recommendation was agreed without a division **and without a recommendation that the draft Order should be debated, the question on a motion made by a Minister of the Crown relating to the draft Order shall** be put forthwith;

(b) if the committee's recommendation was agreed without a division, but with a recommendation that the draft Order should be debated, **the draft Order shall stand referred to a Delegated Legislation Committee, and Standing Order No. 118 (Delegated Legislation Committees) shall apply;**

(c ~~b~~) if the committee's recommendation was agreed after a division, **the question on a motion made by a Minister of the Crown relating to the draft Order shall** be put not later than one and a half hours after the commencement of proceedings on the motion;

(2) If the committee has recommended under paragraphs (4) or (6) of Standing Order No.141 that a draft Order ~~subject to the affirmative or super-affirmative procedure be not approved, no motion to approve the draft Order shall be made unless the House has previously resolved to disagree with the committee's report; the questions necessary to dispose of proceedings on the motion for such a resolution shall be put not later than three hours after their commencement; and the question on any motion thereafter made by a Minister of the Crown that the draft Order be approved shall be put forthwith~~**be not made (in the case of the negative procedure) or be not approved (in the case of the affirmative or super-affirmative procedure), has reported and that the recommendation is not intended to operate section 16(4), 17(3) or (as the case may be) 18(5) or (9) of the Legislative and Regulatory Reform Act 2006:-**

(a) **no Order in the terms of the draft Order, or**

¹¹ See Annex to Appendix A

(b) motion to approve the draft Order,

shall be made unless the House has previously resolved to disagree with the committee's report.

(3) Any questions necessary to dispose of proceedings on a motion for a resolution pursuant to paragraph (2) to disagree with the report of the committee shall be put not later than three hours after their commencement; and the question on any motion thereafter made by a Minister of the Crown that the draft Order, if subject to the affirmative or super-affirmative procedure, be approved shall be put forthwith.

~~(3) If the committee recommends that a draft Order subject to the negative resolution procedure should not be made, that recommendation shall be deemed to constitute notice of a motion under paragraph (4)(a) of Standing Order No 118 (Delegated Legislation Committees).~~

(4) Motions under paragraphs (1) or (2) above may be proceeded with, though opposed, until any hour.

Regulatory Reform Committee

141. (1) There shall be a select committee, called the Regulatory Reform Committee, to examine and report on—

(i) every draft Order laid before the House under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006 ('the Act');

(ii) any Subordinate Provisions Order or draft of such an Order made or proposed to be made under sections 1 and 4 of the Regulatory Reform Act 2001 (except those not made by a Minister of the Crown);

(iii) any matter arising from its consideration of such Orders or draft Orders; and

(iv) matters relating to regulatory reform.

(2) In the case of every draft Order referred to in paragraph (1)(i) above the committee shall consider the Minister's recommendation under section 15(1) of the Act as to the procedure which should apply to it and shall report to the House any recommendation under the Act that a different procedure should apply.

(3) In its consideration of draft Orders under Part 1 of the Act the committee shall include in its consideration in each case whether provision in the draft Order—

(a) appears to make an inappropriate use of delegated legislation;

(b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

(c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secures a policy objective which could not be satisfactorily secured by non-legislative means;

(e) has an effect which is proportionate to the policy objective;

(f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;

(g) does not remove any necessary protection;

(h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) is not of constitutional significance;

(j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) has been the subject of, and takes appropriate account of, adequate consultation;

(l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;

(m) appears to be incompatible with any obligation resulting from membership of the European Union;

Provided that in the case of draft Orders under section 20 of the Act, those criteria which are not relevant to provisions made pursuant to section 2(2) of the European Communities Act 1972 need not be taken into consideration in relation to those provisions.

(4) In relation to every draft Order laid under section 14 of the Act subject to the negative or affirmative procedure under sections 16 or 17 of the Act, the committee shall report its recommendation whether the draft Order should be made (in the case of the negative procedure) or approved (in the case of the affirmative procedure), indicating in the case of the latter **whether the recommendation was agreed** –

(a) without either a division or a recommendation that the draft Order should be debated;

(b) without a division but with a recommendation that the draft Order should be debated; or

(c) after a division.

(5) In relation to every draft Order laid under section 14 of the Act subject to the super-affirmative procedure under section 18 of the Act, the committee shall report its recommendation as to whether—

(a) the draft Order should be proceeded with unamended under section 18(3) of the Act; or

(b) a revised draft Order should be laid under section 18(7) of the Act; or

(c) no statement under section 18(3) or revised draft Order under section 18(7) should be laid.

(6) In relation to every draft Order or revised draft Order subject to the super-affirmative procedure being proceeded with under section 18(3) or 18(7) of the Act, the committee shall report its recommendation whether the draft Order or revised draft Order should be approved, indicating in the case of draft Orders which it recommends should be approved whether its recommendation was agreed ~~without a division;—~~

(a) without either a division or a recommendation that the draft Order should be debated;

(b) without a division but with a recommendation that the draft Order should be debated; or

(c) after a division;

and in respect of such draft Orders or revised draft Orders the committee shall consider in each case all such matters set out in paragraph (3) of this Order as are relevant and the extent to which the Minister concerned has had regard to any resolution or report of the committee or to any other representations made during the period for parliamentary consideration

(7) It shall be an instruction to the committee considering draft Orders being proceeded with under section 18(3) or section 18(7) that it report not more than fifteen sitting days (in the case of an order under section 18(3)) or twenty-five sitting days (in the case of an order under section 18(7)) after the relevant statement is laid.

(8) In relation to every draft Order or revised draft Order, the committee shall report any recommendation under section 16(4) of the Act that the draft Order be not made, or under sections 17(3), 18(5) or 18(9) of the Act that no further proceedings be taken in relation to the draft Order.

~~[(8A) Where the committee has reported under paragraphs (4) or (6) above that a draft Order should be made (in the case of the negative procedure) or should be approved (in the case of the affirmative or super-affirmative procedure) it may also report a recommendation that the draft Order be debated.]~~

(9) In its consideration of any Subordinate Provisions Order under paragraph (1)(ii) above, the committee shall in each case consider whether the special attention of the House should be drawn to it on any of the grounds laid down in paragraph (1) of

Standing Order No. 151 (Statutory Instruments (Joint Committee)); and if the committee is of the opinion that any such Order or draft Order should be annulled, or, as the case may be, should not be approved, they shall report that opinion to the House.

(10) The committee shall consist of fourteen members; and, unless the House otherwise Orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(11) The committee shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;

(b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference; and

(c) to appoint a sub-committee, of which the quorum shall be two, which shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place.

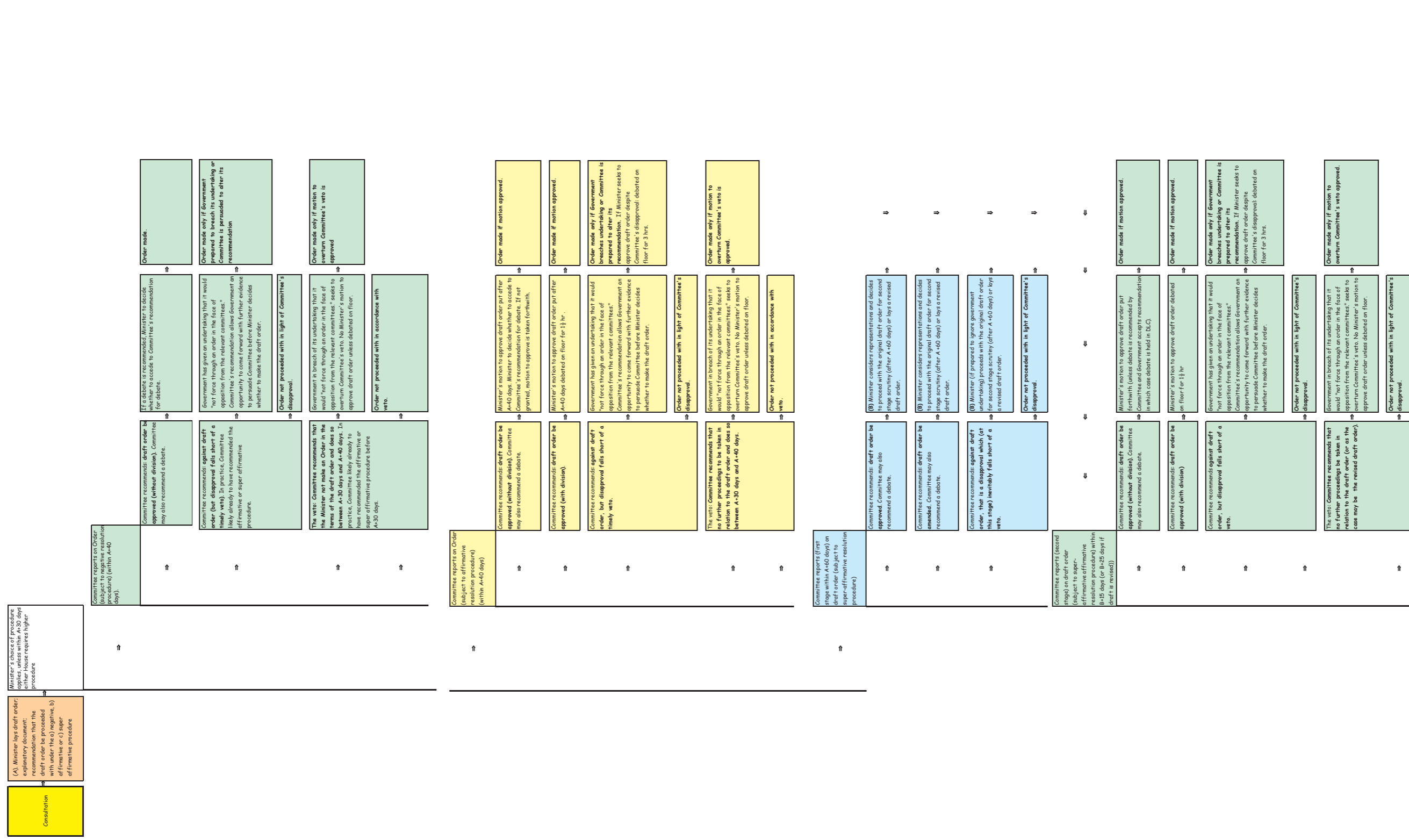
(12) The committee and the sub-committee shall have the assistance of the Counsel to the Speaker.

(13) The committee and the sub-committee shall have power to invite Members of the House who are not members of the committee to attend meetings at which witnesses are being examined in relation to matters within paragraphs (1) (i) and (ii) and such Members may, at the discretion of the chairman, ask questions of those witnesses; but no Member not being a member of the committee shall otherwise take part in the proceedings of the committee or sub-committee, or be counted in the quorum.

(14) It shall be an instruction to the committee that before reporting on a draft Order it shall afford to any government department concerned ~~a reasonable opportunity of furnishing orally or in writing to it or to the sub-committee appointed by it such explanations as the department think fit~~ **an opportunity of furnishing orally or in writing to it or to the sub-committee appointed by it such explanations as the department think fit, except to the extent that the committee considers that it is not reasonably practicable to do so without risking the opportunity for effective exercise of a function conferred by section 15, 16, 17 or 18 of the Act on a committee charged with reporting on a draft order.**

Annex 2

Regulatory Reform Procedure



Notes:
 The draft order will be subjected to similar procedures during its scrutiny by the relevant Committee in the Lords.
 In calculating any period of days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days (but including Friday where the House has adjourned from the Thursday to the next Monday).
 Source:
 Legislative and Regulatory Reform Act 2006 and Standing Orders (18, 12(3) and 141)

Conclusions and recommendations

1. We reinforce our earlier recommendation that we should have the power to refer draft Orders to debate if we consider they warrant wider consideration, regardless of whether or not we divide. We recommend that the following text be included in the Standing Orders:

(4) In relation to every draft Order laid under section 14 of the Act subject to the negative or affirmative procedure under sections 16 or 17 of the Act, the committee shall report its recommendation whether the draft Order should be made (in the case of the negative procedure) or approved (in the case of the affirmative procedure), indicating in the case of the latter whether the recommendation was agreed –

(a) without either a division or a recommendation that the draft Order should be debated;

(b) without a division but with a recommendation that the draft Order should be debated; or

(c) after a division.

2. If our recommendation above is not accepted, we recommend that the Government clarifies precisely what “unusual circumstances” could justify its refusal for such a debate. Moreover, we see no benefit in a specific provision to recommend a debate that does not also trigger procedural consequences.¹²
3. We welcome the removal of the detailed provisions relating to the over-turning of a Committee veto.
4. We therefore recommend that the relevant paragraph of the proposed new Standing Order No. 18 read as follows:

(2) If the committee has recommended under paragraphs (4) or (6) of Standing Order No.141 that a draft Order be not made (in the case of the negative procedure) or be not approved (in the case of the affirmative or super-affirmative procedure), has reported and that the recommendation is not intended to operate section 16(4), 17(3) or (as the case may be) 18(5) or (9) of the Legislative and Regulatory Reform Act 2006:-

(a) no Order in the terms of the draft Order, or

(b) motion to approve the draft Order,

shall be made unless the House has previously resolved to disagree with the committee’s report.

(3) Any questions necessary to dispose of proceedings on a motion for a resolution pursuant to paragraph (2) to disagree with the report of the committee

¹² The procedural consequences are set in the proposed version Order 18.

shall be put not later than three hours after their commencement; and the question on any motion thereafter made by a Minister of the Crown that the draft Order, if subject to the affirmative or super-affirmative procedure, be approved shall be put forthwith.

5. We welcome the Minister's acceptance of our recommendation that such Subordinate Provisions Orders continue to be scrutinised by our Committee.
6. We are pleased to note that Minister's further revised version of Standing Orders 141(3)(b) and (c) has incorporated our recommendation.
7. We welcome the extra time available for the second stage scrutiny of revised draft orders.
8. We reaffirm our earlier recommendation that the provision should be deleted. If this is not acceptable, we would recommend the following wording:

(14) It shall be an instruction to the committee that before reporting on a draft Order it shall afford to any government department concerned an opportunity of furnishing orally or in writing to it or to the sub-committee appointed by it such explanations as the department think fit, except to the extent that the committee considers that it is not reasonably practicable to do so without risking the opportunity for effective exercise of a function conferred by section 15, 16, 17 or 18 of the Act on a committee charged with reporting on a draft order.
9. The Minister gives a commitment that a review would be undertaken within five years. We welcome this.

Formal minutes

Tuesday 6 March 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks
Dr Doug Naysmith

Alison Seabeck
Mr Andrew Slaughter

The Committee deliberated.

Draft Report [Special Report: Revised Standing Orders], 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 20 read and agreed to.

Resolved, That the Report be the Second Special 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 a day and time to be fixed by the Chairman.]

List of written evidence

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Appendix A

Letter from the Pat McFadden MP, Parliamentary Secretary, Cabinet Office, to the Chairman of the Regulatory Reform Committee

I am writing in response to the recommendations made in your First Special Report of Session 2006-07 concerning Regulatory Reform Committee Standing Orders for scrutinising orders under the Legislative and Regulatory Reform Act 2006.

Continuing current procedures, I am content to agree that a Minister's motion to agree a draft order, which has not been approved unanimously by Members of the Committee, should be debated on the floor of the House for up to one and a half hours. The Committee has also proposed that it should be able to force a debate on orders on which they have not divided. I can assure you that, if the Committee were to make such a recommendation, the usual channels would of course consider positively any request for wider debate in the same way that time for debate was given for wider consideration of the Regulatory Reform Order (Fire Safety) proposal. But I would also be happy to underpin this commitment by including in Standing Order No 141, if you think it would be helpful, a specific Committee option to recommend draft Orders which the Committee considers of sufficient legal and political significance, but on which they have not divided, for debate in a Delegated Legislation Committee.

I can reiterate the Ministerial undertaking that the Government will not force through an order in the face of opposition from relevant Committees. I agree with the Procedure Committee (included in your report at Appendix C) that the House in principle must have the power and the right to overturn a Committee veto. On this basis, I am content to agree that there is no need for detailed procedures to be laid out in Standing Order No. 18.

Although the main body of your report does not deal with it, I cannot agree to the effect of your proposed change to proposed Standing Order 18 (5) in respect of debate on negative Orders which the Committee has voted against. However, I am content to give an undertaking that a Motion in these circumstances would be given a debate except in very unusual circumstances. A Committee rejection of a draft order subject to negative resolution procedure would be a motion of similar character to a prayer.

I accept that your Committee should continue to scrutinise any future Subordinate Provisions Orders under the 2001 Act. The attached revised draft Standing Orders reflect this. The Government can also accept your Committee's proposed change to the wording in 141 (3b and 3c) to "serves the purpose of removing or reducing a burden ...". I acknowledge that there may be instances in the future where greater flexibility will be required for the second stage Committee reporting period on an amended order under the super-affirmative resolution procedure. Although I agree that your Committee has always fully complied with the instruction of 15 days under the 2001 Act, for the purposes of certainty for both stakeholders supporting any proposed order and the Government itself, I propose that the period should be lengthened to 25 days. An extra two working weeks should cover any future possibility of timing difficulties.

I do not see the need for deleting Standing Order 141(13). Instead I have redrafted it so that it is less burdensome, but still ensures that the relevant Government department has the opportunity to explain the case for the need for an order.

I can reiterate the Government undertaking made during the passage of the Act through Parliament, that a Minister will report to the House no less than five years after enactment on the operation of the Act. In the meantime, departmental Simplification Plans will include proposals that have been identified as suitable for delivery by order. As you will know from the 2006 Simplification Plans, where available, the proposals include an estimate of the costs saved and the benefits expected from individual proposals. Furthermore, every draft order laid under the LRRRA 2006 will be accompanied by an explanatory document. It is a statutory requirement that this explanatory document include in the case of an order under section 1, an assessment of the extent to which the provision would remove or reduce burdens. Together, Simplification Plans and

individual orders will provide a very clear validation of costs and benefits derived from orders under the LRRRA.

There are one or two other minor drafting changes from the version in my earlier letter which I understand are acceptable following discussions at official level. I hope that on the basis of this we can agree the final draft of Regulatory Reform Committee Standing Orders so that CA Committee clearance on them can be sought

25 January 2007

ANNEX A

Further revised version of Standing Orders

Consideration of Regulatory Reform Orders

18.—(1) If the Regulatory Reform Committee has recommended under paragraphs (4) or (6) of Standing Order No.141 (Regulatory Reform Committee) that a draft Order subject to the affirmative or super-affirmative procedure, laid before the House under Part 1 of the Legislative and Regulatory Reform Act 2006, should be approved, and a motion is made by a Minister of the Crown to that effect, the question thereon shall:

- (a) if the committee's recommendation was agreed without a division, be put forthwith; and
 - (b) if the committee's recommendation was agreed after a division, be put not later than one and a half hours after the commencement of proceedings on the motion;
- (2) If the committee has recommended under paragraphs (4) or (6) of Standing Order No.141 that a draft Order subject to the affirmative or super-affirmative procedure be not approved, no motion to approve the draft Order shall be made unless the House has previously resolved to disagree with the committee's report; the questions necessary to dispose of proceedings on the motion for such a resolution shall be put not later than three hours after their commencement; and the question on any motion thereafter made by a Minister of the Crown that the draft Order be approved shall be put forthwith.
- (3) If the committee recommends that a draft Order subject to the negative resolution procedure should not be made, that recommendation shall be deemed to constitute notice of a motion under paragraph (4)(a) of Standing Order No 118 (Delegated Legislation Committees).
- (4) Motions under paragraphs (1) or (2) above may be proceeded with, though opposed, until any hour.

Regulatory Reform Committee

141. (1) There shall be a select committee, called the Regulatory Reform Committee, to examine and report on—

- (i) every draft Order laid before the House under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006 ('the Act');
- (ii) any Subordinate Provisions Order or draft of such an Order made or proposed to be made under sections 1 and 4 of the Regulatory Reform Act 2001 (except those not made by a Minister of the Crown);
- (iii) any matter arising from its consideration of such Orders or draft Orders; and
- (iv) matters relating to regulatory reform.

(2) In the case of every draft Order referred to in paragraph (1) (i) above the committee shall consider the Minister's recommendation under section 15(1) of the Act as to the procedure which should apply to it and shall report to the House any recommendation under the Act that a different procedure should apply.

(3) In its consideration of draft Orders under Part 1 of the Act the committee shall include in its consideration in each case whether provision in the draft Order—

(a) appears to make an inappropriate use of delegated legislation;

(b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

(c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secures a policy objective which could not be satisfactorily secured by non-legislative means;

(e) has an effect which is proportionate to the policy objective;

(f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;

(g) does not remove any necessary protection;

(h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) is not of constitutional significance;

(j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) has been the subject of, and takes appropriate account of, adequate consultation;

(l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;

(m) appears to be incompatible with any obligation resulting from membership of the European Union;

Provided that in the case of draft Orders under section 20 of the Act, those criteria which are not relevant to provisions made pursuant to section 2(2) of the European Communities Act 1972 need not be taken into consideration in relation to those provisions.

(4) In relation to every draft Order laid under section 14 of the Act subject to the negative or affirmative procedure under sections 16 or 17 of the Act, the committee shall report its recommendation whether the draft Order should be made (in the case of the negative procedure) or approved (in the case of the affirmative procedure), indicating in the case of the latter whether the recommendation was agreed without a division.

(5) In relation to every draft Order laid under section 14 of the Act subject to the super-affirmative procedure under section 18 of the Act, the committee shall report its recommendation as to whether—

(a) the draft Order should be proceeded with unamended under section 18(3) of the Act; or

(b) a revised draft Order should be laid under section 18(7) of the Act; or

(c) no statement under section 18(3) or revised draft Order under section 18(7) should be laid.

(6) In relation to every draft Order or revised draft Order subject to the super-affirmative procedure being proceeded with under section 18(3) or 18(7) of the Act, the committee shall report its recommendation whether the draft Order or revised draft Order should be approved, indicating in the case of draft Orders which it recommends should be approved whether its recommendation was agreed without a division; and in respect of such draft Orders or revised draft Orders the committee shall consider in each case all such matters set out in paragraph (3) of this Order as are relevant and the extent to which the Minister concerned has had regard to any resolution or report of the committee or to any other representations made during the period for parliamentary consideration.

(7) It shall be an instruction to the committee considering draft Orders being proceeded with under section 18(3) or section 18(7) that it report not more than fifteen sitting days (in the case of an order under section 18(3)) or twenty-five sitting days (in the case of an order under section 18(7)) after the relevant statement is laid.

(8) In relation to every draft Order or revised draft Order, the committee shall report any recommendation under section 16(4) of the Act that the draft Order be not made, or under sections 17(3), 18(5) or 18(9) of the Act that no further proceedings be taken in relation to the draft Order.

[(8A) Where the committee has reported under paragraphs (4) or (6) above that a draft Order should be made (in the case of the negative procedure) or should be approved (in the case of the affirmative or super-affirmative procedure) it may also report a recommendation that the draft Order be debated.]

(9) In its consideration of any Subordinate Provisions Order under paragraph (1)(ii) above, the committee shall in each case consider whether the special attention of the House should be drawn to it on any of the grounds laid down in paragraph (1) of Standing Order No. 151 (Statutory Instruments (Joint Committee)); and if the committee is of the opinion that any such Order or draft Order should be annulled, or, as the case may be, should not be approved, they shall report that opinion to the House.

(10) The committee shall consist of fourteen members; and, unless the House otherwise Orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(11) The committee shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;

(b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference; and

(c) to appoint a sub-committee, of which the quorum shall be two, which shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place.

(12) The committee and the sub-committee shall have the assistance of the Counsel to the Speaker.

(13) The committee and the sub-committee shall have power to invite Members of the House who are not members of the committee to attend meetings at which witnesses are being examined in relation to matters within paragraphs (1) (i) and (ii) and such Members may, at the discretion of the chairman, ask questions of those witnesses; but no Member not being a member of the committee shall otherwise take part in the proceedings of the committee or sub-committee, or be counted in the quorum.

(14) It shall be an instruction to the committee that before reporting on a draft Order it shall afford to any government department concerned a reasonable opportunity of furnishing orally or in writing to it or to the sub-committee appointed by it such explanations as the department think fit.

Appendix B

Letter from the Rt Hon Greg Knight MP, Chairman, Procedure Committee to Pat McFadden MP, Parliamentary Secretary, Cabinet Office

Regulatory Reform Standing Orders

Thank you for your recent letter and revised draft Standing Orders relating to the Regulatory Reform Committee and draft orders under the Legislative and Regulatory Reform Act. I, and the members of my Committee, are very appreciative of the open and constructive approach which you have taken to these issues.

We are grateful to you for agreeing to remove the detailed procedures for overturning a Committee veto which were previously laid out in the draft Standing Orders. We would have preferred the Standing Orders to have allowed the Regulatory Reform Committee to ensure a debate on a draft order without having to have divided on it. But since it remains open to the Committee to trigger a debate, where it believes one to be required, by deliberately dividing on the order, we do not believe it is necessary to press the point at this stage. We do not believe that there would be any particular benefit in specifically providing in the Standing Order that the Committee could recommend a debate, which it could equally do without such provision, if there is to be no procedural consequence to such a recommendation.

In sum and despite the reservations expressed above, we are content for you to bring forward draft Standing Orders in the terms of those attached to your letter for the House's approval. I believe that we have demonstrated, in the course of reaching agreement on these matters, the benefits of a positive and co-operative relationship between Ministers and Committees of the House and I am grateful for the role you have played in that.

I am copying this letter to Andrew Miller.

1 February 2007

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