



House of Commons
Regulatory Reform Committee

Government Response to the Committee's Second Special Report of Session 2006–07: Revised Standing Orders

Third 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, 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).

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.

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Third Special Report

Introduction

1. The Government will shortly be tabling revised Standing Orders to change the terms of reference of the Regulatory Reform Committee, as set out in Standing Order No 141, and the Parliamentary procedures for scrutinising relevant draft Orders by the House, as set out in Standing Order No 18.

2. This special report, the third that we have published recently on the subject of the revised Standing Orders, includes the Government's response to our previous special report, and is likely to represent our last opportunity to comment on the revised Standing Orders before the House considers them formally.

3. We are pleased to record that we have reached agreement with the Cabinet Office on most of the issues that initially divided us. For example, we are pleased that the Government has agreed that our Committee will have an expanded remit that would allow it to conduct inquiries into regulatory reform generally. In addition, our Committee will have responsibility for scrutinising Subordinate Provisions Orders under the Regulatory Reform Act 2001 rather than have that scrutiny power transferred to the Joint Committee on Statutory Instruments. We also welcome the Minister's acceptance of our recommendation that our Committee be given more time at the second stage to scrutinise any draft Orders which undergo unexpected changes compared with the version scrutinised by the Committee at the first stage.

4. We also welcome the Minister's recognition that there may be occasions when a pressing time limit for the exercise of a statutory function might require the Committee to exercise its judgement before explanations are furnished by the Government Department concerned. This is unlikely to happen in relation to super-affirmative resolution procedure Orders, where established practices from the 2001 Act can be straightforwardly adapted. But for negative and affirmative resolution procedure Orders, which are novel procedures with stricter time limits, the matter is less certain. In such circumstances, we expect to work with the Government in developing practices aimed at enabling explanations to be furnished in good time for decisions to be taken where that is reasonably practicable.

5. Despite the progress in reaching agreement with the Cabinet Office on the majority of issues, we remain disappointed that we have not reached total agreement on the last two remaining areas. The detailed arguments on these two issues are set out in our previous special reports, so we do not propose to echo them again.¹ Below we simply highlight these two areas.

Provisions to facilitate debates

6. The revised Standing Orders are likely to stipulate that a debate would only take place automatically if we divided on the draft Order. In our two previous special reports, we

¹ Regulatory Reform Committee, First Special Report of Session 2006–07, *Scrutiny of Regulatory Reform Orders*, HC 160 and Regulatory Reform Committee, Second Special Report of Session 2006–07, *Revised Standing Orders*, HC 385

repeatedly called for the revised Standing Orders to be amended to give our Committee the power to refer any draft Order for debate in a Delegated Legislation Committee if it was considered to be of sufficient political or legal significance.² We requested this provision on the grounds that there may be occasions where some Members of the House might wish to have the opportunity to debate a draft Legislative Reform Order even though the draft Order had the unanimous approval of our Committee. The Minister has not accepted our recommendation, but instead has offered us assurances that in the absence of a division, a Committee recommendation for a debate would be considered sympathetically. We welcome this assurance, but remain disappointed that the Minister has not accepted fully our recommendation. Our Committee is likely to want to monitor how the Government responds to such recommendations for debates on draft orders that are considered to be of sufficient legal or political importance.

Overturing our opposition to a draft Order

7. We are also disappointed that the Minister has not accepted our recommendation that all provisions for overturning the procedural effects of our opposition to a draft Order be removed from the revised Standing Orders. The revised Standing Orders are likely to include a provision supporting an understanding that except in “very unusual circumstances”³ time would be made available for a debate whenever the Committee opposes (but does not veto) a draft Order that was subject to the negative resolution procedure. This option would be exercised by deeming the Committee’s objection to the draft Order to constitute a notice of a motion under paragraph (4)(a) of Standing Order No 118 (Delegated Legislation Committees) and tabling a Government motion to refer the draft Order to a Delegated Legislation Committee.

8. In our previous Special Reports, we called for the removal of this provision. We felt this reference to a notice of a motion could easily be misconstrued as a possible way of overturning our opposition to a draft Order and could also give rise to the false assumption that a veto of a negative instrument would automatically generate some further parliamentary procedure (although it is clear from the Act that it does not). The argument has now moved on somewhat in the sense that the revised Standing Orders are now likely to distinguish between a Committee vote against an Order where the Committee chooses not to invoke the statutory veto (which the Committee might wish to do to continue a dialogue with the relevant Government department concerning an Order which the Committee felt was flawed but still salvageable) and the Committee’s exercise of its statutory veto (which the Committee could use if it concluded that an Order was inappropriate for this legislative procedure).

9. As a result of this distinction, the Government’s option of a debate on an opposed (but not vetoed) draft Order which is subject to the negative resolution procedure has the benefit of providing a further parliamentary procedure that would otherwise not exist. In the absence of this procedure, the relevant Minister could simply make the Order

2 Under our 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 Minister’s letter (dated May 2007)

regardless of the opposition of the Committee. By introducing the option of a (probable) debate on such an opposed draft Order, the House would have a procedure similar to that initiated by a prayer. There are two criticisms of this procedure. First, this Parliamentary procedure is a relatively weak form of parliamentary scrutiny. Second, it is important to note that the use of the provision would, on the face of it, be inconsistent with the Government's assurance that it would not proceed with a draft Order in the face of opposition from the relevant Committee.

10. We recognise that – in the absence of a veto – a Minister could proceed to make a negative resolution procedure Order, whatever Standing Orders might state. Accordingly, we expect our Committee to be mindful of the limited effect that its opposition would have in relation to negative resolution procedure draft Orders unless it also invokes the veto. But having said that, we see the merits of including a route to a debate in the case of non-veto opposition to such Orders. Because of that, we recognise that it might appear superficially consistent for Standing Orders to include (as is expected) a procedure for debate to follow non-veto opposition to affirmative or super-affirmative resolution procedure draft Orders as well.⁴ In contrast, rightly in our view, Standing Orders are not expected to provide for the overturning of any veto, or the overturning of any Committee adjustment of the parliamentary procedure for making an Order. We take this opportunity of recording our understanding that the apparent distinction between different types of Committee recommendation results from the need for internal completeness in Standing Orders and no more. Whether or not Committee opposition to a draft Order operates by way of a veto, we expect the Government to honour its undertaking not to proceed in the face of that opposition. On the same basis, we expect the Government not to seek to overturn any Committee adjustment of the parliamentary procedure for making an Order.

Conclusion

11. In welcoming the progress that has been made in refining the Standing Orders, we continue to be disappointed that the last two outstanding points that separate us have not been fully resolved. Despite this disappointment, we would like the House to have the opportunity to consider the revised Standing Orders at the earliest opportunity.

4 It is envisaged that Standing Order 18 will introduce a potential debate on a draft affirmative or super-affirmative resolution Order by the words:

“(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,…”

The reference to “paragraphs (4) or (6)” does not include a reference to paragraph (8) – the provision in the proposed new Standing Order 141 that covers the veto.

Appendix

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

Response to the Regulatory Reform Committee's Second Special Report of Session 2006-07: Revised Standing Orders

I am writing in response to your Committee's report on revised standing orders (March 2007). I am glad to read that we agree on the majority of outstanding issues (including those raised by the Procedure Committee) covered by my letter of 25 January 2007.

On reflection I am content to accept your proposed redrafting of Standing Order 141 (14) to make explicit that the opportunities for departments to give evidence when taking an LRO through Parliament should not unreasonably impede the ability of the Committee to complete its consideration of reports on draft LROs on time.

In my last letter to you I also gave assurance that, if your Committee were to make a recommendation that an order should be debated even if there had been no division, the usual channels would of course consider such a recommendation sympathetically as long as time pressures in the House permit it. Time could be made available for wider debate of an order in the future as it was for the Fire Safety Regulatory Reform Order in 2005.

I reiterate this assurance, as well as the undertaking I gave in that letter that a request by your Committee to debate a negative order which it has voted against (but not vetoed) will be given time for debate except in very unusual circumstances. The Government really does not foresee any difficulty in making time available for debate where there is evidence that the House genuinely wishes a debate on a negative instrument. It is of course very difficult to speculate about hypothetical future situations, but if for some as yet unknown reason difficulties were to arise in the future on either of these issues, I can assure you that the Government will be committed to finding a solution to satisfy the wishes of the House. I think the record of the Government in the past has shown our readiness to do this.

For reasons of clarity, I am content to include in paragraph (3) of SO No 18 a specific reference to the fact that it is intended to apply only where the veto is not being engaged.

I hope this addresses any remaining concerns you may have. The revised Standing Orders will be tabled shortly for agreement by the House and I hope this can be done as soon as possible to allow the first draft Orders under the new Act to be brought forward.

I am copying this letter to Greg Knight, Chairman of the Procedure Committee.

15 May 2007

Formal minutes

Tuesday 5 June 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks
Lorely Burt

Dr Doug Naysmith
Alison Seabeck

The Committee deliberated.

Draft Report [Government Response to the Committee's Second Special Report of Session 2006-07: 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 11 read and agreed to.

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

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

A paper was ordered to be appended to the Report.

Ordered, That the Appendix to the Report be reported 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

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