



House of Commons
Regulatory Reform Committee

**Draft Regulatory
Reform (Financial
Services and Markets
Act 2000) Order 2007**

Sixth Report of Session 2006–07

Report, together with formal minutes

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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).

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Report under Standing Order No. 141

The Regulatory Reform Committee has examined the draft Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 in accordance with Standing Order No. 141. We recommend unanimously that the Order be approved.

1 Introduction

1. The proposal for the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 was laid before the House by the Cabinet Office on 18 December 2006. We published our first stage report on 23 March. The draft Order was laid before the House on 24 May, together with an explanatory memorandum by the Treasury.¹

2. The purpose of the draft Order is to reform wholesale and retail financial markets as part of a ten-point action plan of reforms, as set out in the Government's Pre-Budget Report 2005. The Government intends that the draft Order will deal with a series of burdens and restrictions contained in the Financial Services and Markets Act 2000 and will also provide a more streamlined approach to regulation.

3. The draft Order would remove or reduce burdens in the following areas:

- authorisation requirements in relation to partnerships whose members change [Article 3]
- unnecessary consultation between the FSA and regulators in other countries in the European Economic Area [Article 4]
- obligations on the FSA to fulfil a number of procedural requirements associated with discontinuing or suspending the listing of a security [Articles 5-8]
- requirement on the FSA to issue a warning notice in cases where the cancellation of a sponsor's approval has been requested by the sponsor himself [Article 9]
- the FSA's powers to waive or modify any (as opposed to some) of its rules in respect of authorised and unauthorised persons [Articles 10-12]
- obligations of the FSA when consulting on guidance [Article 13] and
- power of the FSA board to delegate the issuing of guidance [Article 14]

4. 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 resolutions or report of the

¹ Copies of the draft Order and explanatory statement are available to Members of Parliament from the Vote Office and to members of the public from the Cabinet Office. The draft Order is also available from the Cabinet Office website: <http://www.cabinetoffice.gov.uk/regulation/reform/orders/proposals.asp>

Committee or to any other representations made during the period for Parliamentary consideration.² Our discussion of matters arising from our consideration is set out below.

2 The report on the proposal

5. In our first stage report, we considered the proposal against the criteria set out in paragraph (6) of Standing Order No. 141 and concluded that a draft Order in the same form as the proposal should be laid before the House. In that report, we also commented on the proposal to delegate the issue of guidance to a committee or sub-committee of the board of the FSA; specifically we underlined the importance of the FSA to issue a policy statement, which would explain the operation of the new arrangements and, in particular, how consistency, quality and publication of guidelines would be assured. HM Treasury has given us the assurance we requested and a policy statement would be made by the FSA.

The Department's response

6. The draft Order is substantially in the form of its proposal, except for the inclusion of some consequential amendments to subsections (4) and (5) of section 250 of the 2000 Act and paragraphs (3) and (4) of regulation 7 of the Open-Ended Investment Companies Regulations 2001, which the Department states are necessary in the wake of amendments to section 148 (modification or waiver of rules).

7. We are satisfied that the Minister for the Cabinet Office has had due regard to our previous report on the proposal for this draft Order.

3 Other representations made on the proposal

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

8. The Committee issued its report on the proposal for the Order on 5 February 2007. It considered that the proposal met the requirements of the Regulatory Reform Act 2001 and was appropriate to be made under the requirements of the Regulatory Reform Act 2001.

9. The Department states that one representation on the proposal was received on the proposal during the period for Parliamentary consideration and this related to the need for consequential amendments as described above.³

2 Standing Order No. 141(7)

3 Explanatory statement, paragraph 35

4 Recommendation

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

Formal minutes

Tuesday 12 June 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks

John Hemming

Dr Doug Naysmith

Alison Seabeck

Ms Angela C Smith

The Committee considered this matter.

Draft Report (Draft Regulatory Reform (Financial Services and Markets Act 2000) Order 2007), 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 10 read and agreed to.

Resolved, That the Report be the Sixth 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]

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