



House of Commons
Regulatory Reform Committee

**Draft Legislative
Reform (Local
Authority Consent
Requirements)
(England and Wales)
Order 2007**

First Report of Session 2007–08



House of Commons
Regulatory Reform Committee

**Draft Legislative
Reform (Local
Authority Consent
Requirements)
(England and Wales)
Order 2007**

First Report of Session 2007–08

*Report, together with formal minutes and
written evidence*

*Ordered by The House of Commons
to be printed 27 November 2007*

The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which were approved on 4 July.

Current membership

Andrew Miller (*Labour, Ellesmere Port & Neston*) (Chairman)
Gordon Banks (*Labour, Ochil and South Perthshire*)
Lorely Burt (*Liberal Democrat, Solihull*)
Mr Quentin Davies (*Labour, Grantham and Stamford*)
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*)
Judy Mallaber (*Labour, Amber Valley*)
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)
Mr Jamie Reed (*Labour, Copeland*)
Mr Anthony Steen (*Conservative, Totnes*)
Phil Wilson (*Labour, Sedgefield*)

Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform 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;

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 John Whatley (Clerk), Judy Goodall, Acting Inquiry Manager, 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.

Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
2 Description of the draft Order	5
Extent of the draft Order's application	6
3 Assessment of the draft Order	6
Removal and reduction of burdens	6
Cancer treatment advertisements	7
Hackney carriage licence zones	8
Overseas Assistance	9
Arrangements for handling complaints about the curriculum for pupil referral units	9
Necessary safeguards	10
Cancer treatment advertisements	10
Hackney carriage licence zones	10
Overseas Assistance	11
Arrangements for handling complaints about the curriculum for pupil referral units	12
Adequate consultation	12
4 Drafting issues	13
5 Conclusion	14
Formal Minutes	15
List of written evidence	16
Reports from the Regulatory Reform Committee in the previous and present Session	
	<i>inside back cover</i>

Summary

The draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007 was laid before the House by the Department for Communities and Local Government (DCLG) on 25 July 2007 and is the first draft Legislative Reform Order to come before us.

The purpose of this draft Order is remove four requirements on local authorities to obtain consent or approval from the Secretary of State or the Welsh Ministers, or in one case the Attorney General. Specifically, the draft Order would remove requirements for local authorities in England and Wales to obtain consent or approval before taking certain action under the following enactments: the Cancer Act 1939, s4; the Local Government Act 1972, Schedule 14, paragraph 25; the Local Government (Overseas Assistance) Act 1993, s1; and the Education Act 1996, Schedule 1.

The draft Order is subject to the super-affirmative procedure under s18 of the Legislative and Regulatory Reform Act (LRA) 2006. We recommend that the draft Order should be proceeded with in the terms of the draft¹ under s18(3) of that Act.

¹ The Department proposes to make some clarifying amendments to the footnotes and the Explanatory Note. In the Committee's view this does not amount to a material change to the provisions of the draft Order for the purposes of s18 of the LRA 2006.

1 Introduction

1. The draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007 was laid before Parliament on 25 July 2007 under s14(1) of the LRA 2006. An explanatory document by the Department for Communities and Local Government (DCLG) was laid with the draft Order in accordance with that section.

2. Section 15(1) of the LRA 2006 requires the Minister to make a recommendation as to which of three possible procedures should apply in relation to the making of the Order. The Minister recommended that the draft Order should proceed under the affirmative resolution procedure. In his view the degree of scrutiny required was greater than that available under the negative resolution procedure because the proposal affected the functions and powers of local authorities including, to a limited extent, the expenditure of public money and because it involved legislation and policy responsibilities of more than one Government Department and of the Government of Wales. The Minister considered that there was little justification for invoking the super-affirmative procedure because in his view none of the matters in the draft Order were controversial, or of wider political or public importance.²

3. However, the House of Lords Committee on Delegated Powers and Regulatory Reform examined the draft Order and, within the 30-day period referred to in s15, recommended that the super-affirmative procedure should apply. The House of Lords did not by resolution reject that recommendation within that period and so, in accordance with s15(4), the super-affirmative procedure applies.

4. We have examined the draft Order in accordance with Standing Order No. 141(3) and recommend under 141(5) that the draft Order should be proceeded with in the terms of the draft.

2 Description of the draft Order

5. The draft Order concerns the removal of statutory requirements to obtain the consent or approval of the Secretary of State or the Welsh Ministers (or in one case the Attorney General) before local authorities are able to take action in England and Wales in any of the four following instances:

- a) Instituting prosecutions for publishing certain advertisements concerning cancer treatment (s4, Cancer Act 1939);
- b) Amalgamating taxi licence zones within a local authority's area (paragraph 25 of Schedule 14 to the Local Government Act 1972);
- c) Providing advice and assistance to local government bodies overseas (s1, Local Government (Overseas Assistance) Act 1993;

d) Handling complaints about the curriculum provisions at a Pupil Referral Unit (paragraph 6 of Schedule 1 to the Education Act 1996).

6. The Department states that the proposals are part of its commitment to reduce unnecessary bureaucracy for local authorities.³

Extent of the draft Order's application

7. The draft Order would apply only to England and Wales.

8. Any Order which removes a function of the Welsh Ministers may only be made with their agreement. In response to a question from us, the DCLG explained that the National Assembly for Wales gave agreement in March 2007 to the making of the Order, in accordance with s11 of the LRRA 2006 as it then stood. The amendments to s11 by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 came into force on 25 May 2007, from which date s11(2) of LRRA 2006 requires the agreement of the Welsh Ministers for any removal of their functions. However, the consent given by the National Assembly for Wales is a “transferred function”⁴ and has effect as if it were the agreement of the Welsh Ministers⁵. The DCLG has also advised us that the relevant Welsh Ministers were consulted on and agreed the draft Order before it was presented to the National Assembly for Wales in March and that Welsh Ministers appointed following the National Assembly elections in May have been briefed on the Order.⁶

9. **We consider that the necessary consent has been obtained from the Welsh Ministers.**

3 Assessment of the draft Order

10. Our remit is to examine the draft Order against the criteria specified in Standing Order No. 141(3) and then, in the light of that examination, to report whether the draft Order should be proceeded with in the terms of the draft under s18(3) of the Act; or a revised draft Order should be laid under s18(7) of the Act; or no statement under s18(3) or revised draft Order under s18(7) should be laid.

11. Our analysis is set out below. Where a criterion specified in Standing Order No. 141(3) is not discussed, this indicates that we had no concerns about it.

Removal and reduction of burdens

12. A burden is defined in s1(3) of the LRRA 2006 as any of the following: a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity. Under

3 Explanatory Document para 2.1

4 By virtue of paragraph 38(1)(c) of Schedule 11 to the Government of Wales Act 2006

5 Paragraph 39 of Schedule 11 to the Government of Wales Act 2006

6 Appendix B, Letter from DCLG to the Committee Clerk, response to question 1

Standing Order 141(3)(b) we are required to consider whether provision in the draft Order serves the purpose of removing or reducing a burden, or the overall burdens.

Cancer treatment advertisements

13. Section 4 of the Cancer Act 1939 provides that, subject to certain defences, it is an offence to take part in the publication of any advertisement offering treatment, prescribing a remedy, or giving advice in connection with treatment, for cancer. Section 4(6) requires a local authority to obtain the Attorney General's consent before instituting such a prosecution and, subject to that consent, s4(7) of the Act imposes a duty on county councils and county borough councils to bring a prosecution.

14. The draft Order removes the requirement to obtain the Attorney General's consent. It also includes a consequential or incidental measure whereby s4(7) of the 1939 Act is replaced so as to specify that local authorities have discretion as to whether or not to prosecute in each case.

15. The DCLG states that the new s4(7) of the Cancer Act 1939 does not impose a new burden.⁷ However, the proposed change does confer a function on those local authorities previously outside the scope of s4(7) which we believe could be seen as a burden. For example, local authorities are likely to spend time considering whether to prosecute or not in any particular case. The DCLG states that under existing provision, local authorities would have to come to a view about whether or not to prosecute before seeking the consent of the Attorney General and that they already have the staff and structures in place for bringing prosecutions.⁸ The DCLG concludes that there would therefore be no additional burden brought about by the proposed change.

16. In relation to the extension of s4(7) of the 1939 Act to include the metropolitan district councils,⁹ the DCLG explains that this would remove an anomaly which arose as an unintended consequence of the abolition of metropolitan county councils under the Local Government Act 1985. The proposed amendment would ensure that the provisions for issuing proceedings applied consistently across England, as originally intended in the 1939 Act.¹⁰ The Department takes the view that this amendment is an appropriate supplementary or incidental provision as referred to in s1(8) of the LRA 2006 and can also be viewed as the removal of a burden of administrative inconvenience. The inconvenience results directly (for certain councils) and indirectly (for the public in the areas of those councils) from s4 of the 1939 Act and therefore falls within s1(1), (2) and (3)(b) of the LRA 2006.¹¹

17. We consider that the effect of the proposed change to s4(6) of the Cancer Act 1939 to remove the requirement to obtain the Attorney General's consent before instituting prosecutions, would be to remove a burden.

7 Explanatory Document paras 4.8 and 4.9

8 Appendix B, Letter from DCLG to the Committee Clerk, response to question 3

9 See footnote 6 on p 9 of Explanatory Document, which details all the relevant local authorities

10 Explanatory Document, paras 4.9 and 4.11

11 Appendix B, Letter from DCLG to Committee Clerk, response to question 3

18. We are satisfied by the arguments put forward by the DCLG, summarised above in paragraph 16, and consider that the effect of the proposed change to s4(7) of the Cancer Act 1939 is a supplementary provision within s1(8) of the LRA 2006 and can also be viewed as the removal of a burden of administrative inconvenience even though it would appear to confer a financial burden (in the form of administrative costs) on metropolitan county councils which were previously outside the scope of s4(7).

Hackney carriage licence zones

19. Taxis in England and Wales (outside London and excluding Plymouth) are licensed to ply for hire within a “prescribed distance” under the Town Police Clauses Act 1847, as incorporated within s171(4) of the Public Health Act 1875. Usually the prescribed distance comprises the whole of the licensing authority’s area, but some comprise two or more prescribed distances, known as licensing zones. Licensed taxi drivers are compelled to accept hirings which are wholly within the prescribed distance. Prior to 1974, local authorities applied s171(4) of the 1875 Act only in some, mainly urban, areas. In 1974, new local authority areas were created as a result of the Local Government Act 1972. The 1972 Act did not alter the zones licensed under s171(4), and the old licensing zones remained within the new council boundaries. A local authority could choose to have no taxi licensing at all in its district; or it could establish a single licensing zone comprising the whole of its district; or it could continue to license taxis in those areas already established under s171(4) and have no licensing in the remainder of its district.

20. Section 15 of the Transport Act 1985 extended taxi licensing throughout the whole of England and Wales with the effect that an authority which had continued with licensing zones in only part of its district then had to create a new and separate zone for the previously unlicensed area. As a result, some local licensing authorities now have two or more licensing zones within their area, which they may wish to amalgamate. Paragraph 25 of Schedule 14 to the Local Government Act 1972 enables them to pass a resolution to apply s171(4) to the whole of their area. At present the approval of the Secretary of State (or the Welsh Ministers) is required to give effect to this resolution.

21. The proposed change to paragraph 25(4) of Schedule 14 to the Local Government Act 1972 will remove the need for a local authority in England or Wales to obtain the Secretary of State’s or the Welsh Ministers’ approval to a resolution applying s171(4) of the Public Health Act 1875, so that it can amalgamate taxi licensing zones in its area.

22. The DCLG has proposed transitional arrangements, which would apply in the event that a local authority had passed a resolution applying s171(4) of the 1875 Act throughout its area, but had not been given or refused approval by the Secretary of State or the Welsh Ministers before the date on which the proposed Order had come into force. We were told that it sometimes took the Department for Transport several months to process an application.¹² The proposal is that any such resolutions would automatically take effect 35 days after the Order came into force, so that local authorities would be able to benefit from the new freedom at the earliest opportunity and so that they would not be required to

¹² Appendix B, Letter from DCLG to Committee Clerk, response to question 9

continue with the preparation of applications for Secretary of State consent after the repeal of the requirement for consent in relation to new resolutions had come into force.

23. We consider that the effect of the proposed change to paragraph 25(4) of Schedule 14 to the Local Government Act 1972 would be to remove a burden.

Overseas Assistance

24. Section 1 of the Local Government (Overseas Assistance) Act 1993 gives local authorities in Great Britain the power to provide advice and assistance on local government activities to bodies outside the UK. However, under s1(3) of the Act, this power cannot be exercised except with the consent of the Secretary of State or in accordance with a general authorisation given by him. In 1996, the Secretary of State gave a general authorisation that local authorities could give advice and assistance under s1 of the 1993 Act provided that certain conditions were satisfied. These conditions specified the type of schemes that local authorities could support and threshold limits for spending.

25. The DCLG proposes to remove the requirement that action be subject to consent or in accordance with a general authorisation given by the Secretary of State. DCLG has advised us that the existing general authorisation in relation to England and Wales would lapse when the requirement was removed. It states that these measures would remove a burden on local authorities and from the Secretary of State, and would give local authorities the freedom to provide advice and assistance to overseas bodies in accordance with the remaining requirements of the 1993 Act.

26. We consider that the proposed change to the Local Government (Overseas Assistance) Act 1993 removes a burden on local authorities.

Arrangements for handling complaints about the curriculum for pupil referral units

27. Paragraph 6 of Schedule 1 to the Education Act 1996 concerns the curriculum for pupil referral units. There is a duty in sub-paragraph (1) for the local education authority, the management committee (where applicable) and the teacher in charge to exercise their functions with a view to ensuring that the curriculum provision for their unit satisfies certain statutory requirements. Sub-paragraph (2) enables regulations to make provision for the determination and organisation of the curriculum, and the regulations may require the local education committee, management committee or teacher in charge to exercise prescribed functions in relation to the curriculum. Sub-paragraph (3) requires the local education authority, with the approval of the Secretary of State or, in Wales, the Welsh Ministers, to make arrangements for the consideration and disposal of any complaint concerning the unreasonable exercise of any power or duty under sub-paragraph (1) or (2) or the failure to discharge such a duty. The draft Order would amend paragraph 6(3) of Schedule 1 to the Education Act 1996 so as to remove this requirement for approval.

28. We consider that the effect of the proposed change to the Education Act 1996 (Paragraph 6(3) of Schedule 1) would be to remove a burden.

Necessary safeguards

29. Standing Order No.141(3) requires us to consider the provision for maintaining necessary protections;¹³ whether the proposals strike a fair balance between the public interest and the interests of any person adversely affected by it;¹⁴ and whether the proposals prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.¹⁵

Cancer treatment advertisements

30. The DCLG states that removing the requirement on local authorities to seek the consent of the Attorney General before instituting a prosecution and giving local authorities discretion as to whether or not to prosecute will not remove any necessary protection. Authorities will still be able to institute prosecutions but without the restriction of having first to apply to the Attorney General. The Department states that authorities are already familiar with their obligations with regard to taking account of the public interest when deciding whether or not to prosecute. It states that Local Authorities Coordinators of Regulatory Services advice is that the criteria for local authorities deciding whether to bring a prosecution following an investigation are set out in the Code for Crown Prosecutors and local authorities' own enforcement policies (which are based on the Code). It adds that authorities will already be familiar with their obligations in this respect and it was therefore considered unnecessary to spell out any criteria on the face of legislation.¹⁶

31. We consider that the proposed change to the Cancer Act 1939 is fair and does not remove any necessary protection or prevent any person from exercising their rights.

Hackney carriage licence zones

32. The DCLG states that decisions to amalgamate zones need to balance the need for passengers to benefit from being able to hail any cab in any part of the licensing area, with the need to ensure that an appropriate number of taxis operate in that area. It believes that the public interest lies in the move towards greater local level decision-making and local authority accountability and refers to a Government statement that local authorities are best placed to determine local transport needs and to make decisions about them in the light of local circumstances.¹⁷

33. Under the proposed change local licensing authorities which wanted to amalgamate their taxi licensing zones would still have to follow the statutory procedure for giving notice, as set out in paragraph 25(5) of Schedule 14 to the Local Government Act 1972. This procedure obliges the local authority to give "requisite notice" of its intention to pass a resolution by means of advertisements in local newspapers and notices to councils of parishes etc in the area. The Department for Transport takes the view that the continued

13 SO No. 141(3)(g)

14 SO No. 141(3)(f)

15 SO No.141(3)(h)

16 Appendix B, Letter from DCLG to Committee Clerk, response to question 6

17 Explanatory Document, para 5.10

obligation on local authorities to give “requisite notice” contains an implicit obligation on them to consider any representations which they might receive in response to the notice. The Department adds that further protection is provided in that if the authority does not give full and proper consideration to all representations made to it, its resolution will be open to judicial review in the usual way.¹⁸

34. The proposed transitional arrangements are explained in paragraph 22. The DCLG told us that it considered the possibility that an objector might have decided to delay challenging in court an amalgamation resolution which he believed to be invalid until the Secretary of State or the Welsh Ministers had decided whether or not to approve it.¹⁹ However, if a resolution which was passed before the proposed Order came into force was caught by the transitional provision, the effect of the provision would be – contrary to the objector’s earlier expectation – that the resolution would take effect without an approval from the Secretary of State or Welsh Ministers. The Department has pointed out that the risk of such a situation would be drastically reduced if potential objectors were made aware of this possibility from the outset and has advised us that the Department for Transport has written to all local authorities to make them aware of the transitional provision.²⁰ It is important that information relating to any cases to which transitional arrangements might apply is properly publicised in order to ensure that any potential objectors are aware of the effect of the provisions. Furthermore, if objections are raised, and the authority does not give full and proper consideration to all representations made to it, its resolution will be open to judicial review in the usual way.

35. We consider that the proposed change to paragraph 25(4) of Schedule 14 to the Local Government Act 1972 and the associated transitional arrangements are fair and do not remove any necessary protection or prevent any person from exercising their rights.

Overseas Assistance

36. The DCLG states that although local authorities have made use of their powers to provide overseas assistance, for example when arranging twinning and other international links, the Secretary of State has not received any individual applications for consent under the 1993 Act provisions. The Department suggests that this indicates that the assistance offered has not been substantial and has fallen within the terms of the general authorisation.²¹ It believes that the necessary protection would be maintained under the proposed new arrangements because any overseas assistance would be part of the council’s budget and so open to the scrutiny of local taxpayers under the Audit Commission Act 1998.²² Section 15(1) of that Act provides that any persons interested may inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them. Section 15(2) requires a local government elector to be given the opportunity to

18 Appendix B, response to question 10(d)

19 Explanatory Document, paras 5.23 to 5.28

20 Appendix B, response to question 9

21 Explanatory Document para 6.9

22 Appendix D, response to question 3

question the auditor about the accounts if the elector so requests, and s16(1) provides that a local government elector has a right to make objections at audit.

37. We asked the Department why it had not consulted the Audit Commission, given that it is responsible for monitoring local authority expenditure. The Department told us that the proposal had no implications for the powers and duties of the Audit Commission, but undertook to seek its views. The Audit Commission confirmed that it supported the proposal which, in its view was very much in line with the policy of lifting unnecessary burdens from local authorities.²³

38. We consider that the proposed change to the Local Government (Overseas Assistance) Act 1993 is fair and does not remove any necessary protection or prevent any person from exercising their rights.

Arrangements for handling complaints about the curriculum for pupil referral units

39. The DCLG states that the proposed changes to paragraph 6(3) of Schedule 1 to the Education Act 1996 will not affect the ability of a person to make a complaint to a local authority regarding the curriculum provided at a Referral Unit and will not affect the duty on local authorities to have a complaints procedure. The Department also adds that the Secretary of State or the Welsh Ministers would be able to use their intervention powers under s496 and s497 of the Education Act 1996 to direct a local authority if it refused to provide a process for hearing the complaint or acted unreasonably in doing so.

40. We consider that the proposed change to the Education Act 1996 (paragraph 6(3) of Schedule 1) is fair and does not remove any necessary protection or prevent any person from exercising their rights.

Adequate consultation

41. A first consultation was published by DCLG in July 2005 and ran from 20 July 2005 until 14 October 2005.²⁴ The consultation document was published on the Department's website and sent to all local authorities and to a range of other organisations connected with each of the proposals. The Attorney General's office was consulted on the proposed change to the Cancer Act 1939. The office confirmed that it agreed with the proposal to remove the requirement to obtain the Attorney General's consent for prosecutions and to remove the duty on local authorities to prosecute, and stated that it had no other comments.

42. The main consultation document covered all four of the provisions included in this draft Order. It also included questions about another provision, relating to s71(2) of the Local Government and Housing Act 1989, which the DCLG states was removed from the draft Order due to the provision made for the repeal of Part V of that Act in its entirety in Part 12 of the Local Government and Public Involvement in Health Bill. The public

²³ Appendix F

²⁴ A summary of responses is provided in the Explanatory Document paras 3.5, 3.6

consultation was conducted under requirements laid down under the Regulatory Reform Act 2001, but also satisfied the requirements of the LRA 2006. All of the respondents to the main consultation supported the proposals on which they commented, and the DCLG told us that the most common additional response was that deregulation should go a lot further.²⁵

43. A supplementary consultation was conducted regarding the proposal to correct an anomaly whereby s4(7) of the Cancer Act 1939 omitted reference to metropolitan district councils. Three of the four respondents were supportive of correcting the anomaly and the remaining respondent commented on matters outside the scope of the consultation.²⁶ Another small scale supplementary consultation was carried out with regard to transitional provision for taxi zone amalgamation resolutions submitted before the draft Order became effective and not yet approved or disapproved.²⁷ All five consultees were supportive of the proposed transitional provision and none raised any problems.²⁸

44. **We consider that the consultations met the requirements of s13 of the LRA 2006.**

4 Drafting issues

45. **We welcome the Department's commitment to add a footnote clarifying paragraph 3 of the preamble to reflect the fact that consent was given by the National Assembly for Wales with effect as if it were the agreement of the Welsh Ministers. In our view this does not amount to a material change to the provisions of the draft Order for the purposes of s18 of the LRA 2006.**

46. We wrote to the DCLG to highlight a number of instances where the accuracy of the footnotes and the Explanatory Note might be improved and the Department undertook to make the suggested changes.²⁹

47. **We welcome the Department's commitment to revise the footnotes and Explanatory Note. In our view this does not amount to a material change to the provisions of the draft Order for the purposes of s18 of the LRA 2006.**

48. **If the Minister decides to proceed under s18(3), we consider that the statement laid before Parliament referred to in that subsection should include the text of the draft Order incorporating the changes to the footnotes and Explanatory Note so as to convey information about the small changes incurred. If the Minister decides to proceed under s18(7), the revisions to the footnotes and Explanatory Note can be incorporated in a revised draft Order laid before Parliament under that subsection.**

25 Explanatory Document, para 3.6

26 Explanatory Document, p24

27 Explanatory Document, paras 5.29 and 5.30 and Appendix B, Letter from DCLG to the Committee Clerk, response to question 12

28 Explanatory Document, para 5.30

29 Appendix A and Appendix D, response to question 5

5 Conclusion

49. We recommend that a draft Order should be proceeded with under s18(3) of the LRRRA 2006 in the terms of the draft. We welcome the Department's intention to amend the footnotes and Explanatory Note as mentioned in paragraphs 45 to 47. In our view these amendments do not amount to a material change to the provisions of the draft Order for the purposes of s18 of the LRRRA 2006.

Formal Minutes

Tuesday 27 November 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks
Mr Quentin Davies
John Hemming

Dr Doug Naysmith
Phil Wilson

Draft Report (Draft Legislative Reform (Local Authority Consent Requirements) 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 49 read and agreed to.

Summary agreed to.

Papers were appended to the Report as Appendices .

Resolved, That the Report be the First Report of the Committee to the House.

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

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

List of written evidence

A Letter from the Clerk of the Committee to the Department for Communities and Local Government	17
B Letter from the Department for Communities and Local Government to the Clerk of the Committee	19
C Letter from the Clerk of the Committee to the Department for Communities and Local Government	30
D Letter from the Department for Communities and Local Government to the Clerk of the Committee	31
E E-mail from the Clerk of the Committee to the Department for Communities and Local Government	33
F E-mails from the Department for Communities and Local Government to the Clerk of the Committee and letter from the Audit Commission to the Department for Communities and Local Government	33

Appendix A

Letter from the Clerk of the Committee to the Department for Communities and Local Government: Draft Legislative Reform (Local Authority Consent Requirements) Order 2007: request for information

At its meeting yesterday, the Committee considered the above draft Order and decided to seek further information from you. The issues which concern the Committee are set out below under the various proposals.

In providing your answers, please bear in mind that the Committee requires full responses by the 27 October.

QUESTIONS RELATING TO THE DRAFT ORDER

General questions

Q 1 The preamble to the draft Order states that it is made with the agreement of the National Assembly for Wales. The agreement required is that of the Welsh Ministers (section 11(2) of the Legislative and Regulatory Reform Act (LRRRA) 2006, as amended). **Please explain:**

- (i) **the legislative or interpretative basis for converting an existing agreement of the National Assembly for Wales into an agreement of the Welsh Ministers, as required by section 11(2); or**
- (ii) **if there is no such basis, the plans for obtaining the necessary agreement.**

Q 2 **Please confirm that the consultation documents were available on the department's website throughout the consultation period.**

Cancer treatment advertisements

Q 3 The Department states (paras 4.8 and 4.9) that new section 4(7) of the Cancer Act 1939 does not impose a new burden on the grounds that it does not impose any obligations on authorities. However, the proposed change does seem to confer a function on those previously outside the scope of section 4(7) that could be seen as a burden. For example, local authorities are likely to spend time considering whether to prosecute or not in any particular case. **Given that section 1(3) of the LRRRA provides for a wider definition of burden, please explain how the Department justifies its conclusion that the new section 4(7) of the Cancer Act 1939 does not impose a new burden when it clearly confers a function on such authorities which were previously outside the scope of section 4(7).**

Q 4 Removal of an anomaly is not a ground for including a provision in a draft Order. **Please explain how the amendment relating to metropolitan district councils fits into section 1 of the LRRRA.**

Q 5 Paragraph 4.12 of the explanatory document is somewhat generalised on the tests set out in section 3(2) of the Act. **Please go through the tests in section 3(2) of the LRRRA one by one.**

Q 6 The proposed changes will give local authorities the discretionary power to prosecute, but no criterion is specified. The Department seems to assume (paras 4.4 and 4.12 of the explanatory document) that local authorities will comply with the Code of Practice for Crown Prosecutors thereby taking account of the public interest when deciding whether or not to prosecute. **Please explain if there is an obligation on local authorities to comply with the Code or if they individually decide whether or not to do so? If the latter, is this considered sufficient or would it have been better to spell out the criterion expressly in section 4(7)?**

Q 7 As regards the proposed changes to the Cancer Act 1939, there appears to be some ambiguity over whether or not the Attorney General was consulted. The Attorney General is included in para 3.1 of RIA as a

consultee, but not listed as a consultee in Annex A2. **Please explain whether or not the Attorney General was consulted on the proposed change. And if so, what were his views?**

Hackney carriage licence zones

Q 8 Paragraphs 5.11 and 5.14 of the explanatory document explain that representations (on merging licensing areas for taxis) will need to be considered by relevant local authorities. **Please explain why the right to have representations considered was not made explicit by the draft Order.**

Q 9 Also on such mergers, **please explain why it was concluded that resolutions in the pipeline as at the date of coming into force of the draft Order would not need to be approved.**

Q 10 Paragraphs 5.10 to 5.14 are somewhat generalised and partial on the tests set out in section 3(2) of the Act. **Please go through the tests in section 3(2) of the LRRRA one by one.**

Q 11 **Please explain why the option for a person who objected to an amalgamation of seeking a judicial review was not mentioned in the evaluation of the protection mechanisms (and only referred to in its description of the proposed transition arrangements).**

Q 12 **Please provide further details about the small scale supplementary consultation on transitional provision for taxi zone amalgamation, including the reason for selecting the five organisations which were consulted and the questions addressed in the exercise.**

Overseas assistance

Q 13 In relation to overseas assistance, instead of the limit now specified in general guidance each local authority will, if the draft Order is made as drafted, have greater scope to increase their spending on foreign travel in relation to local government activities abroad. **Given the potential for abuse, please explain - a) why the option was not taken to include provision under section 4 of the LRRRA enabling the Secretary of State to restore by statutory instrument, the position now covered by the general authorisation; and b) why the Audit Commission, which is responsible for monitoring local authority expenditure, was not consulted.**

Q 14 Paragraphs 6.9 to 6.11 are somewhat generalised and partial on the tests set out in section 3(2) of the LRRRA 2006. **Please go through the tests in section 3(2) of the LRRRA one by one.**

Q 15 **Given section 9 of the LRRRA, which permits section 1(8) based provisions to include matter within the legislative competence of the Scottish Parliament, please explain why the occasion was not taken to ensure that there would be a single master text of the Local Government (Overseas Assistance) Act 1993, leaving the position in Scotland unchanged?**

Curriculum for pupil referral units –arrangements for complaints

Q 16 Paragraph 7.8 is somewhat generalised on the tests set out in section 3(2) of the LRRRA 2006. **Please go through the tests in section 3(2) of the LRRRA one by one.**

For completeness, I also set out below a number of instances where the Committee suggests the accuracy of some footnotes and the Explanatory Note might be improved. Clearly the precise wording in each case is a matter for the Department and Parliamentary Counsel, **but please respond in relation to each of these points as well as the previous questions.**

Point	Possible change
Page 1 footnote (a)	Add before full stop at end: ‘ <i>sections 1, 4, 11, 13, 24 and 27 have been amended by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), Schedule 1, paragraphs 143 to 149.</i> ’

Page 2 footnote (c)	Add before full stop at end: ‘, as amended by the Local Government Act 1985 (c.51), Schedule 17 and by the Local Government (Wales) Act 1994 (c.19), section 1(5)’.
Page 2 footnote (e)	Delete ‘subsection (4) of’
Page 3 footnote (a)	List the Acts in chronological order and add before ‘and S.I. 2001/3618’: ‘paragraph 83 of Schedule 1 to the Fire and Rescue Services Act 2004 (c.21); paragraph 10(3)(c) of Part 1 of Schedule 2 to the Civil Contingencies Act 2004 (c.36)’.
Page 3 footnote (b)	In opening line change ‘paragraph 184’ to ‘paragraphs 57 and 184’
Page 4, fourth paragraph of Explanatory Note	In second sentence change ‘without’ to ‘unless it is exercised with’

I should be grateful to receive your response to all these questions, together with any additional information which the Department believes would be helpful to the Committee, **not later than 27 October 2007**.

In the meantime, if you would like any further information or clarification concerning the Committee’s request, please let me know, preferably by email.

17 October 2007

Appendix B

Letter from the Department for Communities and Local Government to the Clerk of the Committee: response to request for information

Thank you for your e-mailed letter sent to my colleague Siobhan Scott, and dated 17 October 2007, advising us that the Regulatory Reform Committee had considered the Legislative Reform Order at its meeting on 16 October. In order to inform its consideration, the Committee has asked a series of questions on the various consent regimes.

In order for officials to respond, I had to seek advice from the relevant Government Departments who have policy responsibility for the consent regimes, and colleagues have provided replies which are as full as possible.

Taking the Committee’s questions each in turn;

General questions

1) The preamble to the draft Order states that it is made with the agreement of the National Assembly for Wales. The agreement required is that of the Welsh Ministers (section 11(2) of the Legislative and Regulatory Reform Act 2006 (“LRRRA”), as amended).

’Please explain:

- (i) the legislative or interpretative basis for converting an existing agreement of the National Assembly for Wales into an agreement of the Welsh Ministers, as required by section 11(2); or*
- (ii) if there is no such basis, the plans for obtaining the necessary agreement.*

The National Assembly for Wales, constituted under the Government of Wales Act 1998, gave agreement in March 2007 to the making of the Order, in accordance with section 11 of the LRRRA 2006 as it then stood. The amendments to section 11 by the Government of Wales Act 2006 (Consequential Modifications and

Transitional Provisions) Order 2007 came into force on 25 May 2007, from which date section 11(2) was amended to require the agreement of the Welsh Ministers.

By virtue of paragraph 38(1)(c) of schedule 11 to the Government of Wales Act 2006, a "transferred function" (in paragraphs 39 and 40) means a function which is conferred or imposed on the Welsh Ministers by a provision of any Act in consequence of the amendment of that Act by or under the Government of Wales Act 2006. For present purposes, the agreement of Welsh Ministers under section 11 of the LRRRA is a "transferred function".

By virtue of paragraph 39 of schedule 11 to the Government of Wales Act 2006, anything that was done by or in relation to the National Assembly constituted by Government of Wales Act 1998 for the purpose of or in connection with a transferred function has effect as if done by the transferee of the transferred function, the transferee here being the Welsh Ministers. The Department therefore considers that the requirement to gain agreement of Welsh Ministers under section 11(2) has been satisfied.

The relevant Welsh Ministers were consulted on and agreed the draft Order before it was presented to the National Assembly for Wales in March. Welsh Ministers appointed following the National Assembly elections in May have been briefed on the Order.

2) Please confirm that the consultation documents were available on the department's website throughout the consultation period.

I can confirm that the consultation documents were available on the department's website throughout the consultation period.

Cancer treatment advertisements

3) The Department states (paras 4.8 and 4.9) that new section 4(7) of the Cancer Act 1939 does not impose a new burden on the grounds that it does not impose any obligations on authorities. However, the proposed change does seem to confer a function on those previously outside the scope of section 4(7) that could be seen as a burden. For example, local authorities are likely to spend time considering whether to prosecute or not in any particular case.

'Given that section 1(3) of the LRRRA provides for a wider definition of burden, please explain how the Department justifies its conclusion that the new section 4(7) of the Cancer Act 1939 does not impose a new burden when it clearly confers a function on such authorities which were previously outside the scope of section 4(7).'

Under existing provision, local authorities would have to come to a view about whether or not to prosecute in any particular case, in other words as to whether the duty imposed by section 4(7) of the Cancer Act 1939 is triggered. This would involve satisfying themselves that an offence has been committed in contravention of section 4(1), that no defence arises under section 4(2), and that the merits of the case are strong enough to justify bringing a prosecution. The exercise of a discretion will involve the consideration of the same elements. However (under section as it is proposed to be amended) the final decision as to whether or not to proceed with a prosecution will rest with the authority itself, rather than with the Attorney-General. The Department thus does not consider that any additional burden is imposed.

In relation to the authorities (metropolitan district councils) which are not included in the description "the council of every county and county borough" in section 4(7), the proposed amendment will of course not oblige any authority to bring a prosecution, but will put beyond doubt such authorities' powers to act if necessary to protect the public in their areas. The Department considers that this enlargement of the discretion of the authorities in question does not impose any new burden, even bearing in mind the terms of the definition of "burden" in section 1(3) of the LRRRA. No immediate financial cost (see section 1(3)(a)) is imposed, and under the proposed amendment the authorities in question would have a choice as to whether or not to incur the financial cost of bringing a prosecution, should the grounds for doing so arise. There would, of course, be administrative matters to consider (see section 1(3)(b)), but these would not in the Department's view amount to "inconvenience": authorities are empowered to bring prosecutions in a variety

of areas, and will already have staff and structures in place for doing so. (Subparagraphs (c) and (d) of section 1(3) are not, in the Department's view, applicable in this case.)

4) Removal of an anomaly is not a ground for including a provision in a draft Order.

'Please explain how the amendment relating to metropolitan district councils fits into section 1 of the LRRRA'.

The Department considers that there are two analyses under which the amendment relating to metropolitan district councils fits into section 1. First, it is considered to be an appropriate supplementary or incidental provision (see section 1(8)). Second and alternatively, it can be viewed as removal of an administrative inconvenience.

(i) Incidental or supplementary amendment

The Department avers that in its view, the proposed amendment to include metropolitan district councils in subsection (7) is supplementary or incidental to the repeal of section 4(6) and the amendment to section 4(7), which provides councils with the discretionary power to institute proceedings (rather than imposes a duty on them to institute proceedings). Listing the authorities to which the new procedure is to apply, in terms which are consistent with the current state of local government structure, is incidental or supplementary to the establishment of the procedure itself.

(ii) Administrative inconvenience

The Department takes the view that the amendment relating to metropolitan district councils removes a burden, which is an administrative inconvenience resulting directly (for certain councils) and indirectly (for the public in the areas of those councils) from section 4 of the 1939 Act. It therefore falls within sections 1(1), (2) and (3)(b) of the LRRRA.

Since the abolition of the metropolitan county councils by the Local Government Act 1985, the duty to institute proceedings under section 4(7) of the 1939 Act has not been exercisable by any local authority within metropolitan county areas. The exclusion of metropolitan district councils was an unintentional consequence of the abolition of metropolitan councils under the Local Government Act 1985. The effect of this is that currently, under the 1939 Act, metropolitan district councils cannot bring proceedings under section 4 of that Act against persons who take part in the publication of any advertisement offering treatment, prescribing a remedy, or offering advice in connection with treatment, for cancer. Part of the country is therefore excluded from the protection provided by section 4

This anomaly is a burden for members of the public in areas of such councils in that the law in relation to them is left in a state of inconsistency, which may confuse them and ultimately leave them vulnerable to the very acts which section 4 of the Cancer Act 1939 was intended to prevent. There is no logical reason to exclude part of the country from this Act nor to provide residents in those areas with a lower level of consumer protection.

The administrative inconvenience is also a burden for metropolitan district councils themselves. Although currently, metropolitan district councils have general powers to prosecute under section 222 of the Local Government Act 1972, the test under that section is that they can do so where they consider it expedient for the promotion or protection of the interests or inhabitants for their area. They cannot, though, prosecute under section 4 of the 1939 Act. The extent of the powers under section 222 is comparatively less clear and can lead to protracted argument as to whether or not a particular case falls within those powers. It is by no means certain that an authority could bring a prosecution under that section for the sort of offence envisaged by section 4 of the Cancer Act 1939. It would be more straightforward, convenient and consistent if metropolitan district councils were able to prosecute under the same legislative provisions as other authorities for the same type of offence.

5) Paragraph 4.12 of the explanatory document is somewhat generalised on the tests set out in section 3(2) of the Act.

'Please go through the tests in section 3(2) of the LRRRA one by one.'

Section 3 of the LRRRA imposes conditions which the Minister must consider to be satisfied before he can make an order containing provision under section 1(1). In relation to this question and to questions 5), 10), 14) and 16), we note that section 3(1) only requires those conditions in section 3(2) which are relevant to be considered. However, with the aim of assisting the Committee as far as possible, each of the tests is considered below in relation to each question, although clearly some are more relevant, in relation to particular policy proposals, than others.

3(2)(a): The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means.

The policy objective – to remove the necessity for seeking the Attorney-General's consent, and to give all local authorities the same discretionary powers, as to prosecutions under the Cancer Act 1939 – can only be achieved by legislative means. The obligation to seek the Attorney-General's consent is in primary legislation, and can only be amended by further primary legislation or by means of an order under the LRRRA.

3(2)(b): The effect of the provision is proportionate to the policy objective

The Department considers that the proposed amendments in the Order to section 4(6) and (7) of the 1939 Act are proportionate to the policy objectives of decreasing unnecessary bureaucracy for local authorities (by removing the requirement to obtain the consent of the Attorney General before authorities are able to take action locally) and ensuring that no parts of the country are excluded from the protections that the 1939 Act provide.

3(2)(c) The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it.

The Department does not consider that persons are adversely affected by the repeal of section 4(6) and amendment to section 4(7) of the 1939 Act. Further, no new burdens are created by the proposal.

3(2)(d) The provision does not remove any necessary protection

Removing the requirement on local authorities to seek the consent of the Attorney-General before instituting a prosecution will not remove any necessary protection. Authorities will still be able to institute prosecutions under section 4 of the 1939 Act for the publication of any advertisement offering treatment, prescribing a remedy, or offering advice in connection with treatment, for cancer, but without the restriction of having first to apply to the Attorney-General.

The removal of the requirement to seek the consent of the Attorney-General arguably removes any consideration as to whether a prosecution is in the public interest, leaving the local authority under a duty to prosecute in all cases. The Order therefore substitutes section 4(7) of the 1939 Act so as to make clear that the specified local authorities have discretion on whether or not to prosecute in any particular case. Local authorities should comply with the Code for Crown Prosecutors (thereby taking account of the public interest) in deciding whether or not to prosecute under section 4 of the 1939 Act, as they do in considering whether or not to bring other sorts of prosecutions.

The inclusion of metropolitan district councils in section 4(7) of the 1939 Act will ensure these district councils have the same powers available to their counterparts elsewhere in the country and therefore that residents in these areas are covered by the same consumer protection as those living elsewhere in England. These changes, therefore, do not remove any necessary protection.

3(2)(e) The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

Section 4 of the 1939 Act will continue to provide that, subject to certain defences, it is an offence to take part in the publication of any advertisement offering treatment, prescribing a remedy, or offering advice in

connection with treatment, for cancer. The amendments to subsections (6) and (7) do not amend the nature of the offence in that section. The authorities will continue to have the power to bring proceedings under section 4 of the 1939 Act. As the consent of the Attorney-General will no longer be required, authorities will have discretion, rather than a duty, to bring proceedings. Accordingly, the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

3(2)(f) the provision is not of constitutional significance

The amendments to section 4(6) and (7) of the 1939 Act are not of constitutional significance.

6) The proposed changes will give local authorities the discretionary power to prosecute, but no criterion is specified. The Department seems to assume (paras 4.4 and 4.12 of the explanatory document) that local authorities will comply with the Code of Practice for Crown Prosecutors thereby taking account of the public interest when deciding whether or not to prosecute.

Please explain if there is an obligation on local authorities to comply with the Code or if they individually decide whether or not to do so? If the latter, is this considered sufficient or would it have been better to spell out the criterion expressly in section 4(7)?

LACORS (Local Authorities Coordinators of Regulatory Services) advice is that the criteria for local authorities deciding whether to bring a prosecution following an investigation, are set out in the Code for Crown Prosecutors, and local authorities' own enforcement policies (which are based on the Code). Authorities will already be familiar with their obligations in this respect. It was therefore considered unnecessary (and inconsistent with the policy objective of conferring greater freedoms in decision-making on local authorities) to spell out any criterion on the face of legislation.

7) As regards the proposed changes to the Cancer Act 1939, there appears to be some ambiguity over whether or not the Attorney General was consulted. The Attorney General is included in para 3.1 of RIA as a consultee, but not listed as a consultee in Annex A2.

Please explain whether or not the Attorney General was consulted on the proposed change. And if so, what were his views?

The Attorney General's office was consulted on the proposed change and confirmed on 6 June 2005 its agreement with the proposal (1) to remove the requirement to obtain the Attorney General's consent for prosecutions and (2) to remove the duty on local authorities to prosecute. No other comments were given.

Hackney carriage licence zones

8) Paragraphs 5.11 and 5.14 of the explanatory document explain that representations (on merging licensing areas for taxis) will need to be considered by relevant local authorities.

Please explain why the right to have representations considered was not made explicit by the draft Order'.

The draft Order simply removes the requirement for the Secretary of State to approve a taxi amalgamation resolution before it can take effect. The procedure to be followed by a local authority in terms of passing the resolution (contained in paragraph 25 of Schedule 14 to the Local Government Act 1972) remains in place.

This procedure obliges the local authority to give "requisite notice" of its intention to pass a resolution by means of advertisements in local newspapers and notices to parishes in the district.

The Department for Transport takes the view that the continued obligation on local authorities to give "requisite notice" contains an implicit obligation on them to consider any representations which they might receive in response to the notice. This obligation arises as a matter of general administrative law requiring authorities to act reasonably and rationally, and the Department does not, therefore, consider that the draft Order needs to make any special provision for the consideration of representations.

9) Also on such mergers,

'Please explain why it was concluded that resolutions in the pipeline as at the date of coming into force of the draft Order would not need to be approved'.

The transitional arrangements in the draft Order regarding taxi amalgamation resolutions were based on the Department for Transport's view that local authorities should be able to benefit from the new freedom which would be available to them at the earliest opportunity.

And, bearing in mind that it can take the Department several months to process an application for approval, it would seem anomalous for them to be considering an application possibly two or more months after the repeal of the requirement for consent had come into force.

The Department for Transport has taken steps to alert licensing authorities to the possible change in the law to enable them to make informed decisions about any future resolutions. A letter was sent to every local authority in England and Wales at the time of laying the draft Order in July 2007 which, as well as explaining the proposal in general terms, drew specific attention to the transitional arrangements in order that those local authorities contemplating amalgamation would be aware of the proposals.

10) Paragraphs 5.10 to 5.14 are somewhat generalised and partial on the tests set out in section 3(2) of the Act.

'Please go through the tests in section 3(2) of the LRRRA one by one'.

(a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

The policy objective - to reduce the burden on local government by removing the need for authorities to seek the Secretary of State's approval when they want to amalgamate taxi licensing zones - can only be achieved by legislative means. There is a statutory obligation in primary legislation on licensing authorities to seek the Secretary of State's approval before an amalgamation resolution can take effect. This statutory requirement can only be lifted by legislative means.

(b) the effect of the provision is proportionate to the policy objective

The Department for Transport considers that the effect of the provision is proportionate to the policy objective.

The policy objective is to reduce unnecessary burdens on local government and place on them greater responsibility for making local decisions and more accountability to local people. Removing the requirement for the Secretary of State to approve taxi amalgamation resolutions will meet this objective; local authorities will no longer have to go through the bureaucratically burdensome task of preparing a submission to the Secretary of State (who is not well-placed to make decisions on matters that are so local in nature) and they will be accountable for any decision they make to amalgamate taxi licensing zones.

The provision goes no further than is necessary to achieve the policy objective.

(c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

The Department for Transport considers that the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it.

The public interest lies in the move towards greater local level decision-making and local authority accountability - as well as reducing a burden from local authorities.

Those who could potentially be adversely affected by the provision are taxi drivers and taxi owners who might object to a local authority's decision to amalgamate its taxi licensing zones. In such cases, the trade might

understandably appreciate the fact that they could put their objections to the Secretary of State who would be ultimately responsible for making a decision on whether to approve.

The Department for Transport recognises that there will be people in the taxi trade who might be adversely affected, but it is notable that they did not object to the proposal in the consultation exercise. Moreover, local authorities are responsible for formulating taxi (and private hire vehicle) policies for their own areas, so the trade would be used to negotiating with the local authorities, and making any necessary representations to them, in relation to general local taxi policy decisions. Those affected will still have normal legal remedies available to them in relation to the authorities' decisions. The Department has no reason to believe that potential adverse effects outweigh the public interest.

(d) the provision does not remove any necessary protection

The Department for Transport is satisfied that the provision does not remove any necessary protection.

Local licensing authorities who wanted to amalgamate their taxi licensing zones would still have to follow the statutory procedure for giving notice, as set out in paragraph 25(5) of Schedule 14 to the Local Government Act 1972. They would also have a legal obligation on them to consider any representations put to them before they pass a resolution.

As well as the specific protection mechanism relating to amalgamation resolutions, if the taxi trade (or any person) considered that the local authority had acted unlawfully or engaged in maladministration, they would be able to pursue their grievances through application for judicial review and the Local Government Ombudsman respectively.

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

The Department for Transport considers that the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

This conclusion was reached on the basis that any person who believed that they might be adversely affected by a taxi amalgamation resolution would still have the right to make representations. The representations would be to the local authority, and no longer to the Secretary of State, but the position would remain that an aggrieved person would have the right to make their views known and considered in advance of a resolution being passed.

(f) the provision is not of constitutional significance

The Department for Transport considers that this provision is not of constitutional significance; it simply removes a burden from local authorities and makes them more accountable for local decisions.

11) *'Please explain why the option for a person who objected to an amalgamation of seeking a judicial review was not mentioned in the evaluation of the protection mechanisms (and only referred to in its description of the proposed transition arrangements).'*

The Department for Transport recognises that an additional form of protection - the possibility of an application for judicial review - was mentioned in the section relating to transitional provisions but not in the evaluation of protection mechanisms. This reflected the fact that the evaluation of protection mechanisms focussed on the mechanisms available under the specific legislation governing taxi amalgamation resolutions i.e., the obligation on local authorities to give "requisite notice" and the implicit obligation on them to consider any representations generated by the notice.

An application for judicial review is a more generic form of protection which applies to a whole range of decisions made by public bodies; it was mentioned simply for the sake of completeness in the section on transitional arrangements. But the main focus of the Explanatory Document was the fact that the Local Government Act 1972 would continue to provide a sufficient form of protection.

12) *'Please provide further details about the small scale supplementary consultation on transitional provision for taxi zone amalgamation, including the reason for selecting the five organisations which were consulted and the questions addressed in the exercise.'*

The Department for Transport drew up the transitional provisions after the main consultation on the principle of whether to remove the Secretary of State's role in approving taxi amalgamation resolutions. The Department therefore concluded that it should carry out a supplementary consultation to gauge opinion in such a way as to avoid holding up the progress of the draft Order whilst targeting the main people who would have an opinion or be affected.

A letter was sent to five organisations on 14 November 2005 asking for a response by 17 November. The letter set out some of the background and posed two questions:

- i) Are you in favour of the proposal to allow amalgamation resolutions which have been made before the Regulatory Reform Order comes into force to take effect automatically 35 days after the RRO comes into force?*
- ii) Do you foresee any problems in adopting this approach? If so please explain your reasons.*

The five organisations who were asked about the transitional arrangements were chosen on the following basis:

- a) James Button - Mr Button is a lawyer who specialises in taxi law. He has written a book on taxi law ("Taxis - Licensing Law and Practice") and he had already shown an interest in the issue by responding to the main consultation exercise.
- b) The Institute of Licensing - The Institute is one of the Department's principal stakeholders - it represents taxi licensing officers in England and Wales. It had also shown an interest in the issue by responding to the main consultation.
- c) Isle of Wight Council - The IoW Council, at that time, had an interest in amalgamating its own zones. The Council responded to the main consultation and the Department took the view that its views would be of particular value given the fact that it would, at some point in the near future, be going through the procedure. [The Council subsequently passed a resolution in January 2006 which was approved by the Secretary of State in September 2006.]
- d) The National Association of Licensing and Enforcement Officers - This is another of the Department for Transport's principal taxi stakeholders. NALEO, like the Institute of Licensing, represents taxi licensing officers in England and Wales. They did not respond to the main consultation, but the Association's members would be directly affected by the transitional arrangements.
- e) The National Taxi Association - The NTA is the principal stakeholder representing the taxi trade in England and Wales outside London. Whilst they did not respond to the main consultation exercise, they were chosen for the small-scale supplementary consultation because it would be their members - taxi drivers and owners - who would be most affected by the removal of the Secretary of State's approval role.

Overseas assistance

13) In relation to overseas assistance, instead of the limit now specified in general guidance each local authority will, if the draft Order is made as drafted, have greater scope to increase their spending on foreign travel in relation to local government activities abroad.

'Given the potential for abuse, please explain - a) why the option was not taken to include provision under section 4 of the LRRRA enabling the Secretary of State to restore by statutory instrument, the position now covered by the general authorisation; and b) why the Audit Commission, which is responsible for monitoring local authority expenditure, was not consulted'

a) Whilst the Department for Communities and Local Government is grateful for the Committee's indication that section 4 of the LRRRA would be available should it wish to confer power on the Secretary of State of the nature described, and will continue to keep the policy under close review, the Department does not accept that abuse is a necessary implication of the extension to local authorities of greater responsibility in managing their own financial affairs. To include such provision as suggested would fly against the policy objective of extending trust and conferring greater freedom on authorities. Moreover in the Department's view it would be an unusual approach to legislation, to include a provision reserving the possibility of reversing a legislative change.

b) Any decision taken by local authorities in relation to offering assistance would be part of the council's budget approved by the council which is democratically accountable to local taxpayers. As the question recognises, the Audit Commission will, of course, continue to monitor local authority expenditure.

14) Paragraphs 6.9 to 6.11 are somewhat generalised and partial on the tests set out in section 3(2) of the LRRRA 2006.

'Please go through the tests in s section 3(2) of the LRRRA one by one'

On the conditions in section 3(2) of the LRRRA:

(a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

The policy is to allow authorities complete freedom to provide advice or assistance in accordance with the remaining requirements of the 1993 Act. That is achieved by removing the consent requirement - which requires legislation to amend those requirements

b) the effect of the provision is proportionate to the policy objective

The policy objective as stated above is met by amending the 1993 Act to remove the involvement of the Secretary of State in the decision-making process where a local authority is considering giving advice and assistance under section 1(1) of the 1993 Act. Authorities will still have to comply with the usual rules of administrative law requiring them to act reasonably and responsibly in their decision-making, but will not be subject to general constraints which may not be appropriate in an individual case, nor have to seek consent from the Secretary of State. The Department considers that the effect of the provision is proportionate to the policy objective.

c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person affected by it

The provision is considered to be in the interest of the public as a whole and no individuals are adversely affected by it. The safeguard of the Audit Commission's scrutiny, as mentioned above, remains in place, and taxpayers remain able to influence their authorities through the usual channels of local democracy and where appropriate, judicial review.

d) the provision does not remove any necessary protection

This is covered in paragraph 6.10 of the Explanatory Memorandum:

This legislation is out of line with current approaches and local authorities should be free to incur expenditure to provide advice and assistance, in a manner they deem appropriate. This approach is consistent with provisions in the power of well-being³⁰ which enables authorities to incur expenditure, without limit, where it promotes social, economic or environmental well-being of the local community. Local authorities'

30 s.2 and in particular s.2(4)(a) and (b) Local Government Act 2000:
<http://www.legislation.hmsso.gov.uk/acts/acts2000/00022--b.htm#2>

expenditure is audited and they should be accountable to their communities for decisions, including on providing overseas advice and assistance, where this results in local authorities incurring expenditure. We believe that this maintains necessary protections.

e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

This condition does not seem to be relevant. No right or freedom is in question here, other than the right of authorities to determine how to give assistance under the 1993 Act.

f) the provision is not of constitutional significance

The Department considers that this proposal is not of constitutional significance: it simply removes a burden from local authorities and makes them locally accountable for their decisions.

15) *'Given section 9 of the LRRRA, which permits section 1(8) based provisions to include matter within the legislative competence of the Scottish Parliament, please explain why the occasion was not taken to ensure that there would be a single master text of the Local Government (Overseas Assistance) Act 1993, leaving the position in Scotland unchanged?'*

The Scottish Executive were consulted on the proposals and decided that, in respect of Scotland, they did not want the consent requirement removed from the 1993 Act. The precise drafting of article 4 of the Order is of course a matter for Parliamentary Counsel, but the Department notes the Committee's concern and will ask Counsel to consider this if an opportunity arises.

Curriculum for pupil referral units – arrangements for complaints

16) Paragraph 7.8 is somewhat generalised on the tests set out in section 3(2) of the LRRRA 2006.

'Please go through the tests in section 3(2) of the LRRRA one by one.'

The Department for Children, Schools and Families takes the view that this consent requirement is no longer necessary because the amendment to paragraph 6(3) of Schedule 1 will not affect the ability of a person to make a complaint to a local authority regarding the curriculum provided at a pupil referral unit ("PRU") and will not affect the duty on an authority to make arrangements for the disposal of that complaint. If the authority refuses to provide a process for hearing the complaint or acts unreasonably in doing so, the Secretary of State or the Welsh Ministers will be able to use their intervention powers under section 496 and 497 of the Education Act 1996 to direct the LA accordingly. The provision is therefore fair, it does not remove any necessary protection or prevent any person from exercising their rights.

In detail, the provision meets the conditions set out in section 3(2) of the Local Regulatory Reform Act 2006 as follows:

a) As the requirement to seek the Secretary of State's approval for curriculum complaints procedures for PRUs is in primary legislation, there is no non-legislative means by which the requirement could be removed. The terms of the 1996 Act do not allow any discretion for authorities not to seek the Secretary of State's (or that of Welsh Ministers in Wales) approval of the arrangements for dealing with curriculum complaints. The only way of removing the requirement is therefore through the legislative route.

b) The provision does no more than remove the requirement on local authorities to seek the Secretary of State's approval of PRU curriculum complaints procedures. Authorities will still be under an obligation to have a complaints procedure. We therefore think that the effect of the provision is proportionate to the policy objective, which is to reduce the burden on local authorities by removing the consent requirement.

c) The provision strikes a fair balance between the public interest and the interests of any person adversely affected by it. In fact, we do not believe that anyone will be adversely affected by the provision. There will still be a right to complain about a PRU's curriculum; there will still be a requirement on authorities to put in place

a complaints procedure; and there is still the mechanism for complaint to the Secretary of State if someone thinks that a local authority has failed in a statutory duty or acted unreasonably in the performance of that duty (in this case, the duty being to have a complaints procedure).

d) The provision does not remove any necessary protection; as stated above, if the authority refuses to provide a process for hearing the complaint or acts unreasonably in doing so, the Secretary of State or the Welsh Ministers will be able to use their intervention powers under section 496 and 497 of the Education Act 1996 to direct the LA accordingly.

e) The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise – the right in this case being the right to complain about the curriculum in a PRU, and the right to have that complaint dealt with in a reasonable manner. Neither of these rights are affected by this provision.

f) The provision is not of constitutional significance; it only applies to complaints about the curriculum in a PRU, it does not have any effect on constitutional matters.

For completeness, I also set out below a number of instances where the Committee suggests the accuracy of some footnotes and the Explanatory Note might be improved. Clearly the precise wording in each case is a matter for the Department and Parliamentary Counsel, but please respond in relation to each of these points as well as the previous questions’.

Point	Possible change
Page 1 footnote (a)	Add before full stop at end: ‘; sections 1, 4, 11, 13, 24 and 27 have been amended by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), Schedule 1, paragraphs 143 to 149’.
Page 2 footnote (c)	Add before full stop at end: ‘, as amended by the Local Government Act 1985 (c.51), Schedule 17 and by the Local Government (Wales) Act 1994 (c.19), section 1(5)’.
Page 2 footnote (e)	Delete ‘subsection (4) of’
Page 3 footnote (a)	List the Acts in chronological order and add before ‘and S.I. 2001/3618’: ‘paragraph 83 of Schedule 1 to the Fire and Rescue Services Act 2004 (c.21); paragraph 10(3)(c) of Part 1 of Schedule 2 to the Civil Contingencies Act 2004 (c.36)’.
Page 3 footnote (b)	In opening line change ‘paragraph 184’ to ‘paragraphs 57 and 184’
Page 4, fourth paragraph of Explanatory Note	In second sentence change ‘without’ to ‘unless it is exercised with’

Thank you for your helpful advice. We will consider amending the Explanatory Note as suggested if an opportunity arises.

I hope that the above will assist the Committee in its consideration of the draft Order.

29 October 2007

Appendix C

Letter from the Clerk of the Committee to the Department for Communities and Local Government

Thank you for your letter of 29 October, setting out the responses to the Committee's questions about the draft Order. There are a few areas where further clarification is required. As a consequence of timetable constraints, I should be grateful if you would let me have the information requested below by **Tuesday 13 November at the latest**.

General questions

1) (Reference Q1 in the letter of 17 October) In the light of the explanation given in response to our question 1, what thought has been given to revising paragraph 3 of the preamble to reflect the position more accurately? For example:

“Agreement has been given in accordance with section 11 of that Act().”

together with a new footnote as follows:

“() By virtue of paragraph 39 of Schedule 11 to the Government of Wales Act 2006, the agreement of the National Assembly for Wales which was given on 27 March 2007 has effect as if it were the agreement of the Welsh Ministers.”.

Overseas assistance

2) (Reference Q13b) Why was the Audit Commission, which is responsible for monitoring local authority expenditure, not consulted?

3) (Reference Answer to Q13b) What is the legal requirement that calls for the expenses on overseas assistance to be separately identified in the accounts and for those accounts to be available to the local electors?

4) (Reference Q15) The Committee is aware that Parliamentary Counsel drafts amendments to primary legislation, but looks to the Department for responses to all its questions. Accordingly, please endeavour to consult with Parliamentary Counsel and provide the explanation requested, noting that, as the relevant House of Lords Committee has caused the procedure to become super-affirmative, the option of recommending amendments to the order is available.

Drafting

5) At what stage will the Department consider revising the footnotes and Explanatory Note as set out in the table to the Committee's letter of 17 October?

7 November 2007

Appendix D

Letter from the Department for Communities and Local Government to the Clerk of the Committee

Thank you for your e-mailed letter dated 7 November 2007, advising us that the Regulatory Reform Committee required further clarification in relation to our letter of 29 October.

We have sought further advice from the relevant Government Departments who have policy responsibility for the consent regimes, and colleagues have provided replies which are as full as possible.

Taking the Committee's questions each in turn;

General questions

Q1 (Reference Q1 in the letter of 17 October) *In the light of the explanation given in response to our question 1, what thought has been given to revising paragraph 3 of the preamble to reflect the position more accurately? For example:*

“Agreement has been given in accordance with section 11 of that Act().”

together with a new footnote as follows:

“() By virtue of paragraph 39 of Schedule 11 to the Government of Wales Act 2006, the agreement of the National Assembly for Wales which was given on 27 March 2007 has effect as if it were the agreement of the Welsh Ministers.”.

The Department for Communities and Local Government is grateful for the Committee's suggestion and agrees that it would appear desirable to add a footnote to the preamble for clarification, in the light of concern expressed by the relevant Committees in both Houses. We are currently in the process of agreeing the precise wording with Welsh legal colleagues.

Overseas assistance

Q2 (Reference Q13b) *Why was the Audit Commission, which is responsible for monitoring local authority expenditure, not consulted?*

The Department did not consult the Audit Commission on the proposed removal of the consent requirement in the 1993 Act because the proposal had no implications for the powers and duties of the Commission. However, for further assurance and in the light of the Committee's concern on the point we now intend to get in touch with the Commission and seek any views.

Q3 (Reference Answer to Q13b) *What is the legal requirement that calls for the expenses on overseas assistance to be separately identified in the accounts and for those accounts to be available to the local electors?*

Section 15 of the Audit Commission Act 1998 requires local authorities to make their accounts available for public inspection prior to them being audited. It would normally be expected that expenditure of the kind provided for in the Local Government (Overseas Assistance) Act 1993 would be separately identifiable in the accounts.

Q4 (Reference Q15) *The Committee is aware that Parliamentary Counsel drafts amendments to primary legislation, but looks to the Department for responses to all its questions. Accordingly, please endeavour to consult with Parliamentary Counsel and provide the explanation requested, noting that, as the relevant House of Lords Committee has caused the procedure to become super-affirmative, the option of recommending amendments to the order is available.*

The Department has consulted Parliamentary Counsel, and whilst we are grateful for the Committee's suggestion, following our discussion and Counsel's advice we do not intend to make any further amendment in this respect.

As Counsel points out, as matters stand at present, there is no single master text of the 1993 Act. Since it was originally passed, there have been amendments to section 1 extending only to England and Wales (e.g. the amendments to subsection (10) made by the Fire and Rescue Services Act 2004, and the Local Government Overseas Assistance (London Pensions Fund Authority) Order 2001). There has also been an amendment to section 1 extending only to Scotland, (the amendment to subsection (9) made by the Local Government etc. (Scotland) Act 1994). Further, following devolution, references in the 1993 Act to the 'Secretary of State' are presumably now to be read, in relation to Scotland, as references to the Scottish Ministers (by virtue of the Scotland Act 1998). So there are already different texts in England and Wales, on the one hand, and Scotland on the other.

To have produced a single consolidated text of the whole of section 1, would in Parliamentary Counsel's view and our own, go beyond the intentions of this order and quite possibly beyond vires. Departments are under no obligation to produce consolidated versions of legislative texts each time they make an amendment. Moreover, there is no assumption that where there is a pre-1998 Act extending to the whole of Great Britain, the subject-matter of which is now devolved, it is necessary to keep that Act as a single Act. In fact there are many examples (of which the 1993 Act is one) of Acts which, following devolution, have been amended separately for England and Wales, and Scotland. Indeed, it could be argued that the emergence of separate texts for the two jurisdictions is consistent with the logic of devolution. So what is done by the draft Order, is not, we would say, unusual, but is consistent with the Government's approach to amending primary legislation (in both Bills and SIs).

In so far as the Committee is suggesting that, while leaving the rest of section 1 alone, our amendments should have extended to England and Wales and Scotland, but leaving the position for Scotland as it is, we agree that in principle this would have been possible. But on an administrative level it would have involved getting the agreement of OSAG and OSSE. On a drafting level, it would probably have been difficult to reproduce the situation for Scotland without replacing all the references to the Secretary of State with references to the Scottish Ministers (thus going some way to rewriting the whole of section 1 and producing an entirely new text). There would therefore have been considerable practical difficulty, for little or arguably no benefit. Since there is no single text of the 1993 Act at the moment, the Order does not make matters worse, but leaves the text clear for both England and Wales, and Scotland: indeed as far as England and Wales is concerned (the jurisdiction for which the amendment is made) the result is in our view clearer. All we want to do is repeal the requirement for the Secretary of State's consent. That is what we have done.

Finally Parliamentary Counsel would wish us to point out that the drafting of the Order is done by the Department, and that Counsel's role is limited to checking the amendments to primary legislation. In this case, the Department drafted the amendments and Counsel were, and are, happy with them. We made no suggestions other than what the Order currently provides, and Counsel were and are happy with that. The Department hopes that this will correct any impression inadvertently given that the drafting of the Order was done by Parliamentary Counsel.

Drafting

Q5 *At what stage will the Department consider revising the footnotes and Explanatory Note as set out in the table to the Committee's letter of 17 October?*

The Department is grateful for the comments received from both the Lords' and Commons' Regulatory Reform Committees and we will revise the footnotes to the Order and the Explanatory Note, if there is an opportunity to do so, in the course of the super affirmative procedure.

I hope that the above will assist the Committee in its consideration of the draft Order.

13 November 2007

Appendix E

E-mail from the Clerk of the Committee to the Department for Communities and Local Government

With reference to the attached, the last sentence in the answer to Q2 reads: 'However, for further assistance and in the light of the Committee's concern on the point we now intend to get in touch with the Commission and seek any views'.

The Committee would be grateful to know (i) when the Audit Commission will be consulted and (ii) what is the expected response time from the Commission?

Please could you get back to me by Monday 19 November, at the latest.

Many thanks.

15 November 2007

Appendix F

E-mails from the Department for Communities and Local Government to the Clerk of the Committee and letter from the Audit Commission to the Department for Communities and Local Government

(i) From the Department for Communities and Local Government

In answer to your questions-

i) A letter has already been sent to the Audit Commission seeking their views on the below and CLG have requested a response by w/e 23rd November 2007.

ii) We would then be happy to notify the committee of the Audit Commission response as soon as they are made available to us.

Should you need anything further please do contact myself or Yvonne Dove.

16 November 2007

(ii) From the Department for Communities and Local Government

We've been fortunate enough to have received a quick response from the AC, please see the attached document.

The letter refers to the order as a whole, however we did ask them specifically about the Overseas Assistance Act, as per your question, and directed the Commission towards chapter 7 of the consultation paper.

16 November 2007

(iii) From the Audit Commission

Thank you for your letter of 15 November seeking our view on the proposed Legislative Reform Order, and enclosing the consultation paper which underpins it.

The proposal seems to be very much in line with the policy of lifting unnecessary burdens from local authorities, and I can confirm that the Commission supports it.

16 November 2007

List of Reports from the Committee during the last Session

Session 2006-07

First Special	Scrutiny of Regulatory Reform Orders	160
Second Special	Revised Standing Orders	385
First	Proposal for the Regulatory Reform (Game) Order 2007	384
Second	Proposal for the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007	383
Third	Proposal for the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	397
Fourth	Proposal for the Regulatory Reform (Deer) (England and Wales) Order 2007	411
Fifth	Draft Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007	611
Sixth	Draft Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	673
Seventh	Draft Regulatory Reform (Game) Order 2007	674
Eighth	Draft Regulatory Reform (Deer) (England and Wales) Order 2007	948