



House of Commons  
Regulatory Reform Committee

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**Draft Legislative  
Reform (Local  
Authority Consent  
Requirements)  
(England and Wales)  
Order 2008**

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**Fourth Report of Session 2007–08**

*Report, together with formal minutes and  
written evidence*

*Ordered by The House of Commons  
to be printed 8 July 2008*

## 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 2007.

### 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*)  
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 Mark Prisk (*Conservative, Hertford and Stortford*)  
Mr Jamie Reed (*Labour, Copeland*)  
Mr Anthony Steen (*Conservative, Totnes*)  
Phil Wilson (*Labour, Sedgefield*)

Stephen Hammond (Conservative, Wimbledon) was a Member of the Committee until 23 June 2008 when he was replaced by Mr Mark Prisk.

### Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires the Committee 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](http://www.parliament.uk/regrefcom). A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

## **Committee staff**

The current staff of the Committee are John Whatley (Clerk), Neil Caulfield, 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](mailto:regrefcom@parliament.uk).

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## Summary

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We are content with the proposed amendments which have been introduced into the draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007 by the draft 2008 Order which was laid before Parliament on 26 June 2008. We recommend that the revised draft Order be made.

# 1 Report

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1. The draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007 was laid before Parliament by the Department for Communities and Local Government (CLG) on 25 July 2007.

2. The purpose of the draft Order was to remove the need for local authorities in England and Wales to obtain consent or approval before taking certain action with regard to section 4 of the Cancer Act 1939; Schedule 14, paragraph 25 of the Local Government Act 1972; section 1 of the Local Government Act 1993; and Schedule 1 to the Education Act 1996.

3. Our First Report of the current session, published in November 2007, dealt with the proposals in full.<sup>1</sup> In that Report we drew attention to minor amendments which we considered should be made to footnotes and the Explanatory Note, but which in our view, did not amount to material changes to the draft Order. We agreed with the recommendation from the Minister of State at CLG that the affirmative resolution procedure should apply.

4. But our sister committee in the House of Lords, which reviewed the draft Order at the same time, reached a different conclusion in terms of which parliamentary procedure should apply.<sup>2</sup> Within 30 days of the draft Order being laid, it upgraded the suggested affirmative procedure to super-affirmative. This step resulted in an extension to the allocated time for consideration and allowed for material amendments to be made. The main point of contention so far as the House of Lords Committee was concerned related to the scope of the proposed changes to section 4 of the Cancer Act 1939, a matter on which we had no concerns.<sup>3</sup> That Committee also sought amendment of the recital in respect of Wales.<sup>4</sup>

5. Section 4 of the Cancer Act 1939 makes it an offence to publish any advertisement offering treatment for cancer, subject to certain defences. The draft Order sought to remove the need for local authorities to obtain the consent of the Attorney General before a prosecution under that section was initiated and to change the duty to prosecute into a discretion. The House of Lords Committee agreed that this would remove a burden on both local authorities and the Attorney General. But it took issue with the intention to include metropolitan district councils in the dispensation because when the Local Government Act 1985 abolished metropolitan county councils the function of prosecuting under section 4(7) of the Cancer Act 1939 was not transferred to metropolitan district councils.

6. In our First Report we sided with the view taken by CLG that:

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1 First Report from the Regulatory Reform Committee of Session 2007-08: *The Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007* (HC135).

2 First Report from the Delegated Powers and Regulatory Reform Committee, Session 2007-08 (HL 11).

3 See *Ibid*, para43 and First Report from the Regulatory Reform Committee, Session 2007-08, paras 16 and 18.

4 We welcomed the CLG's commitment to clarify the drafting on this point and did not consider it would amount to a material change. See para45 of our First Report, Session 2007-08.

“...this amendment is an appropriate supplementary or incidental provision as referred to in section 1(8) of the Legislative and Regulatory Reform Act 2006 and can also be viewed as the removal of a burden of administrative inconvenience”.<sup>5</sup>

7. The Delegated Powers and Regulatory Reform Committee on the other hand argued:

“...we cannot agree that the absence of a power to prosecute is an administrative inconvenience within the definition of ‘burden’ in the 2006 [Legislative and Regulatory Reform] Act. We thus recommend that the draft Order be amended so as not to extend to metropolitan district councils”.<sup>6</sup>

8. In accordance with the super-affirmative procedure,<sup>7</sup> a revised draft Order was laid before Parliament on 26 June 2008, along with a statement of the proposed revisions. These included the introduction of the non-material changes we asked to be accommodated and an acceptance of the amendments recommended by the House of Lords Committee.

9. Whilst we stand by our assessment of the original draft Order, **we are content with the proposed amendments and recommend that the revised draft Order be made.**

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5 First Report from the Regulatory Reform Committee Session 2007-08, p7, paras 16 and 18.

6 First Report from the Delegated Powers and Regulatory Reform Committee, Session 2007-08, para43.

7 Section 18(7) of the Legislative and Regulatory Reform Act 2006.

# Formal Minutes

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**Tuesday 8 July 2008**

Members present:

Andrew Miller, in the Chair

Gordon Banks  
John Hemming

Judy Mallaber  
Dr Doug Naysmith

Draft Report (Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008), 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 9 read and agreed to.

Summary agreed to.

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

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

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



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