



House of Commons  
Regulatory Reform Committee

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**Draft Legislative  
Reform (Insolvency)  
(Miscellaneous  
Provisions) Order 2009:  
Second Stage**

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**Eleventh Report of Session 2008–09**

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 10 November 2009*

## 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 was 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*)  
John Penrose (*Conservative, Weston-Super-Mare*)  
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](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 (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 amendments that have been proposed to the draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009 following initial scrutiny. We recommend that the draft Order be made.



# 1 Report

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1. The draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009 and Explanatory Document were laid before Parliament on 13 May 2009. The draft Order contained a total of seven proposals for changes to insolvency procedure, including the following two proposals which are the principal subject of this report:

- Removal of the requirement for certain annual meetings rarely attended by creditors or members and replacement (by means of separate rules) with a written progress report
- Removal of the requirement for certain routine reports to be filed at court in Individual Voluntary Arrangements (IVAs).

2. We published our report on the legislative reform order (LRO) as originally laid on 9 July 2009. In it, we recommended approval of the Order. However, we made a number of observations including chiefly that several of the proposals be the subject of post-implementation review, that certain parts of our report be drawn to the attention of the Insolvency Rules Committee, and that Departments should avoid situations in which the Committee is asked to consider legislative reform orders that are contingent on other legislation.<sup>1</sup>

3. So far as the proposal on annual meetings was concerned, we recommended that implementation of the proposal be reviewed and consulted on not more than two years after commencement to permit evaluation of any objections requiring reconsideration—including in particular any objections that the lack of an annual meeting might prejudice opportunities for communication with insolvency practitioners. So far as the proposal on filing of routine IVA reports was concerned we were satisfied that the proposal should be approved as laid.

4. In its report of 12 June 2009, our counterpart committee in the House of Lords expressed concern that the requirement for abolition of annual meetings to be conditional on provision of progress reports was to be contained not in the draft LRO, but in parallel rules to be made by the Lord Chancellor. That concern echoed the reservation we had expressed about LROs that are contingent on other legislation. The Delegated Legislation and Regulatory Reform Committee observed that without express provision in the LRO there was no guarantee that the parallel rules would be made, and recommended a change to the draft LRO to include such provision.

5. Notwithstanding our own view that post-implementation review would in the present case adequately cover the matter, we understand and appreciate the position taken by the Delegated Legislation and Regulatory Reform Committee. That position has been accepted by the Insolvency Service with the result that a revised draft LRO was laid before Parliament on 29 October 2009 together with accompanying statement. The re-laid LRO contains an express requirement for the provision of progress reports to creditors and the

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<sup>1</sup> See the first Report on the Order, paragraph 20;  
<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/883/883.pdf>

accompanying statement indicates that post-implementation review will take place after two years, as we suggested. **We agree with the amendment.**

6. As an additional matter, in the period between laying of the original draft and re-laying the Insolvency Service noticed an omission from the list of changes to the Insolvency Act 1986 that are consequential on the proposal relating to filing of routine reports in IVAs. The proposed solution would amend section 263D of the Act so that an otherwise uncorrected reference to filing with the court would be replaced by a reference to filing with the Secretary of State, consistent with the proposed new procedure for fast-track IVAs. The details are explained fully in paragraph 22 of the accompanying statement. **The proposed consequential change to the LRO is entirely uncontroversial and we are therefore content with the amendment.**

7. We acknowledge that the Insolvency Service has copied our initial report to the Insolvency Rules Committee as we requested. We note also the accompanying statement's comment that the Minister will in future have regard to the Committee's wishes regarding LROs that are contingent on other legislation. Finally, we welcome the Department's commitment to "issue guidance to insolvency practitioners which will make it clear that these initiatives will provide savings in the cost of administering insolvencies and that those savings are expected to be passed on to creditors by way of better returns."<sup>2</sup>

**8. We are content with the proposed amendments to the LRO and (subject to the recommendations contained in our first report) with the content of the revised LRO as a whole, and we therefore recommend that the revised draft Order be approved.**

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2 See accompanying statement, paragraph 20

# Formal Minutes relating to the report

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**Tuesday 10 November 2009**

Members present:

Andrew Miller, in the Chair

Gordon Banks  
John Hemming

Judy Mallaber  
Dr Doug Naysmith

Draft Report (Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009), 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 8 read and agreed to.

Summary agreed to.

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

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

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



# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
Second	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 209
Third	Draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	HC 210
Fourth	Draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009	HC 399
Fifth	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 400
Sixth	Draft Legislative Reform (Limited Partnerships) Order 2009	HC 794
Seventh	Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009	HC 795
Eighth	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 883
Ninth	Themes and Trends in Regulatory Reform	HC 329-I and II

## Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II (HC 1186)
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090