



House of Commons  
Regulatory Reform Committee

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**Draft Legislative  
Reform (Local  
Government) (Animal  
Health Functions)  
Order 2009**

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**Fourth Report of Session 2008–09**

*Report, together with formal minutes and  
written evidence*

*Ordered by the House of Commons  
to be printed 31 March 2009*

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## 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*)  
Mr Mark Prisk (*Conservative, Hertford and Stortford*)  
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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The draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009 and Explanatory Document were laid before Parliament on 16 March 2009 under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRA). The Order would remove the current prohibition on local authorities using each other's services for animal health provision, thereby allowing authorities without frequent need of such services to fulfil their statutory duties through arrangements with better equipped authorities.

**The Government has proposed that the Order be dealt with under the negative resolution procedure. We agree and accordingly recommend that the draft Order be made.**



# 1 Background

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## The draft Order

1. The draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009 and Explanatory Document were laid before Parliament on 16 March 2009 under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA).

## The Legislation

2. Section 101(1) of the Local Government Act 1972 (LGA 1972) allows local authorities to arrange for their functions to be discharged by other local authorities, but subsection (7) prohibits them from doing so in relation to functions under the Diseases of Animals Act 1950, which was repealed and replaced by the Animal Health Act 1981. However, whereas section 67 of the Diseases of Animals Act 1950 expressed a presumption that powers would be exercised by the home authority whilst stating in section 68 that delegation between neighbouring authorities was permissible, the Animal Health Act 1981 contains no provision analogous to section 68 of the 1950 Act. The prohibition in LGA 1972 section 101(7) has therefore been unqualified in England since 1981. The Department believes this position to have been a legislative oversight. Animal health is the only area in which authorities are not permitted to delegate to each other.

3. Section 101(7) has already been disapplied in relation to Welsh councils by section 101(7A), which was inserted by the Local Government (Wales) Act 1994.

# 2 What the draft Order proposes

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4. The draft Order would repeal section 101(7) and allow local authorities to arrange for animal health functions<sup>1</sup> to be carried out by other local authorities, which is already the situation in relation to other functions. Since there would no longer be any need for an exemption from section 101(7) for Wales, section 101(7A) would be repealed as a consequential amendment. The draft Order does not require delegation or acceptance of functions unless the authorities concerned choose to enter into a service arrangement. Authorities would be free to take advantage of the new position as they chose.

# 3 Preconditions and tests for LROs

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5. The LRRRA sets out tests for a legislative reform order (LRO). In addition, House of Commons Standing Order No. 141 requires us to consider whether LROs give rise to issues under the criteria for consideration of statutory instruments (such as whether the draft Order appears to have retrospective effect) and whether the draft Order purports to make an inappropriate use of delegated legislation.

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<sup>1</sup> These functions include functions in relation to movement and identification of livestock, animal by-products, biosecurity, disease prevention and contingency controls at animal gatherings and animal welfare – see ED page 5 paragraph 1.

6. We do not consider that any issues arise under the Standing Orders, nor that there is inappropriate use of delegated legislation. The only statutory tests that we consider relevant in the present case are those of whether there is removal of necessary protection and whether a burden exists, which are addressed below.

## 4 The Eves Report, Consultations, and Impact Assessment

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7. The Eves review of animal health functions was published in June 2006.<sup>2</sup> Among its many recommendations was a recommendation that legal obstacles to cross-border working between local authorities should be removed. Subsequent consultation agreed.<sup>3</sup>

8. Consultation on the specific proposal in the draft LRO took place from 25 July to 17 October 2008.<sup>4</sup> The number of responses was small (ten) but importantly included LACORS and a number of individual local authorities. One response<sup>5</sup> which in general favoured the proposal observed that clarity was needed over which authority would be responsible in the event of negligence or maladministration. However, responsibility vis-à-vis third parties would remain with the commissioning authority since there will be no change in the statutory duty of each local authority to make satisfactory animal health provision. **In light of that, we are satisfied that no necessary protection will be removed.** All other respondents were unanimously in favour of reform. **We therefore believe that the proposals have been the subject of adequate consultation and have taken proper account of that consultation.**

9. Feedback from consultation provided support for the proposal in general terms rather than definite interest from particular authorities. Therefore the estimates of savings in the impact assessment<sup>6</sup> are approximate, but range up to around £277,000 based on an assumption of a five percent saving on current costs of inspections and other functions. **That is probably at the upper end of likely savings, but we agree that it is nevertheless an unnecessary administrative burden for local authorities with little or no regular need to exercise animal health functions to have to maintain resources for dealing with matters that seldom arise merely as the result of a legislative oversight.**

## 5 Conclusions

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10. The Government has recommended that the draft Order be proceeded with under the negative resolution procedure. **In light of the above, we recommend that the draft Order be made and proceeded with in accordance with section 16 of the Legislative and Regulatory Reform Act 2006.**

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2 <http://www.defra.gov.uk/animalh/ahws/deliver/review.htm>

3 See ED page 5.

4 See <http://www.defra.gov.uk/corporate/consult/localauth-lga-ah/index.htm>

5 Nick Clayton, a veterinary practitioner

6 See ED pages 20 to 22

# Formal Minutes relating to the report

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**Tuesday 31 March 2009**

Members present:

Andrew Miller, in the Chair

Lorely Burt  
John Hemming

Phil Wilson

Draft Report (Draft Legislative Reform (Local Government) (Animal Health Functions) 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 10 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 till Tuesday 28 April at 10.00 am

## List of Reports from the Committee during the current Parliament

### 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

### 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
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090