

*These notes refer to the Regulatory Reform Act 2001  
(c.6) which received Royal Assent on 10th April 2001*

# **REGULATORY REFORM ACT 2001**

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## **EXPLANATORY NOTES**

## **ANNEX K: REGULATORY REFORM PROPOSALS AND ORDERS - PARLIAMENTARY CONSIDERATION**

Note: paragraph 93 of the Explanatory Notes refers.

<b>NOTE FOR DEPARTMENTS</b>
<b>(NOT FOR PUBLICATION IN THE CONSULTATION DOCUMENT):</b>
The wording of this Annex has been agreed with the scrutiny Committees in both Houses of Parliament.
Apart from deleting this text box and inserting the relevant details where indicated by square brackets, Departments should not change the wording of this Annex in any way whatsoever.

### **INTRODUCTION**

1. These reform proposals in relation to [xxxx] will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by introducing a Regulatory Reform Order under the Regulatory Reform Act 2001. Regulatory Reform Orders are subject to preliminary consultation and to extended Parliamentary scrutiny (by Committees in each House of Parliament) of any subsequently proposed Order. On that basis, the Minister invites comments on these reform proposals in relation to [xxx] as measures that might be carried forward by a Regulatory Reform Order.

### **REGULATORY REFORM PROPOSALS**

2. This consultation document on [xxx] has been produced because the starting point for regulatory reform proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.
3. Following the consultation exercise, when the Minister lays proposals before Parliament under the Regulatory Reform Act, he or she must also lay a report for consideration by the Scrutiny Committees setting out a summary of:
  - the burden imposed by the existing law;
  - whether any of those burdens are proposed to be removed or reduced;
  - how the proposals otherwise further the other objects of the Regulatory Reform Act (re-enacting proportionate burdens, introducing new but proportionate burdens, removing inconsistencies and anomalies);
  - whether there is ‘necessary protection’ and how it is to be continued;
  - how any reasonable expectation of the exercise of rights or freedoms is affected (if at all) and how the exercise can be continued;
  - how new burdens (if any) are both proportionate and, taking the proposals as a whole, strike a fair balance between the public interest and the interests of the persons affected by the new burdens;
  - whether an Order that imposes burdens is desirable in terms either of the burdens it removes or the other benefits it brings;
  - whether any parts of the proposed Order are being designated as ‘subordinate provisions’, allowing them to be changed by less elaborate Parliamentary procedures in the future;
  - what cost savings or increases are expected, and why;

- what other benefits there will be from the proposals;
  - details of the consultation process;
  - any representations received as a result of that consultation; and
  - the changes made as a result.
4. On the day the Minister lays the proposals and report, the period for Parliamentary consideration begins. It lasts for 60 days, excluding Parliamentary recesses of more than four days. If you want a copy of the proposals and the Minister's report, you will be able to get them either from the Government department concerned or by visiting the Cabinet Office's website at <http://www.cabinet-office.gov.uk/regulation/act/index.htm>.

#### **PARLIAMENTARY SCRUTINY**

5. Both Houses of Parliament scrutinise regulatory reform proposals and draft orders. This is done by the Scrutiny Committees.
6. Standing Orders in the Commons stipulate that the Committee there considers whether proposals:
- (a) appear to make an inappropriate use of delegated legislation;
  - (b) remove or reduce a burden or the authorisation or requirement of a burden;
  - (c) continue any necessary protection;
  - (d) have been the subject of, and take appropriate account of, adequate consultation;
  - (e) impose a charge on the public revenues or contain provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribe the amount of any such charge or payment;
  - (f) purport to have retrospective effect;
  - (g) give rise to doubts whether they are *intra vires*;
  - (h) require elucidation, are not written in plain English, or appear to be defectively drafted; or
  - (i) appear to be incompatible with any obligation resulting from membership of the European Union;
  - (j) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
  - (k) satisfy the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Act;
  - (l) satisfy the test of desirability set out in section 3(2)(b) of the Act;
  - (m) have been the subject of, and take appropriate account of, estimates of increases or reductions in costs or other benefits which may result from their implementation; or
  - (n) include provisions to be designated in the draft order as subordinate provisions; and in the case of the latter consideration the committee shall report its opinion whether such a designation should be made, and to what parliamentary proceedings any subordinate provisions orders should be subject.
7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee could then be expected to report:
- whether the Minister should proceed to lay a draft order in the same terms as the original proposal, or
  - whether amendment is necessary, or
  - whether the order-making power should not be used (for example, because of the significance or sensitivity of the proposal).

Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at

- <http://www.parliament.uk/commons/selcom/drghome.htm> for the Deregulation and Regulatory Reform Committee in the Commons; and
  - <http://www.parliament.the-stationery-office.co.uk/pa/ld/lddereg.htm> for the Delegated Powers and Regulatory Reform Committee in the Lords.
9. After the 60 days for Parliamentary consideration, the Minister can lay a draft order before both Houses, this time for the approval of Parliament.
10. Each of the Scrutiny Committees examines the draft order to see how far its views have been taken into account. They report, within 15 sitting days, whether the draft order should be approved or not, and it would then be for the relevant House itself to take its final decision.
11. The final draft order then has to be approved by both Houses of Parliament before becoming law.

#### HOW TO MAKE YOUR VIEWS KNOWN

12. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document [in this case XXX]. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.
13. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.
14. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.
15. The Scrutiny Committees appointed to scrutinise Regulatory Reform Orders can be contacted at:

Delegated Powers and Regulatory Reform Committee House of Lords London SW1A 0PW Tel: 0207 219 3103 Fax: 0207 219 2571 <a href="mailto:DPDC@parliament.uk">DPDC@parliament.uk</a>	Deregulation and Regulatory Reform Committee House of Commons 7 Millbank London SW1P 3JA <a href="mailto:deregcom@parliament.uk">deregcom@parliament.uk</a>
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#### NON-DISCLOSURE OF RESPONSES

16. [Section 7](#) of the Act provides what should happen when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed.

17. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

#### **INFORMATION ABOUT THIRD PARTIES**

18. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.
19. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders.

**Cabinet Office**

**Regulatory Impact Unit**

October 2001