House of Commons

Regulatory Reform Committee

Draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

Draft Regulatory Reform (Gaming Machines) Order 2003

Fourteenth Report of Session 2002–03

Ordered by The House of Commons to be printed 21st October 2003

HC 1210
Published on 24th October 2003
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Regulatory Reform Committee

The Regulatory Reform Committee is appointed to consider and report to the House of Commons on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any "subordinate provisions order" made under the same Act.

Current membership

Mr Peter Pike (*Labour, Burnley*) (Chairman)
Mr Russell Brown (*Labour, Dumfries*)
Brian Cotter (*Liberal Democrat, Weston-super-Mare*)
Mr Jeffrey M. Donaldson (*Ulster Unionist, Lagan Valley*)
Mr Paul Goodman (*Conservative, Wycombe*)
Mr Dai Havard (*Labour, Merthyr Tydfil and Rhymney*)
Andy King (*Labour, Rugby and Kenilworth*)
Mr Mark Lazarowicz (*Labour, Edinburgh North and Leith*)
Mr Andrew Love (*Labour/Co-operative, Edmonton*)
Mr John MacDougall (*Labour, Central Fife*)
Chris Mole (*Labour, Ipswich*)
Mr Denis Murphy (*Labour, Wansbeck*)
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)
Andrew Rosindell (*Conservative, Romford*)
Mr Anthony Steen (*Conservative, Totnes*)
Brian White (*Labour, Milton Keynes North East*)

Powers

The full constitution and powers of the Committee are set out in House of Commons SO No 141, available on the Internet via www.parliament.uk.

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/parliamentary_committees/regulatory_reform_committee.cfm.

A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Brian Dye (Committee Assistant) and Liz Booth (Secretary).

Contacts

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Committee Office, 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 Draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

1 Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 in accordance with Standing Order No. 141. We recommend unanimously that the draft Order be approved.

2 Introduction

2. On 10 September 2003 the Government laid the draft Order before Parliament, together with an explanatory statement from the Office of the Deputy Prime Minister (the Department).[1] We have already reported on the proposal for this Order, which would amend Part II of the Landlord and Tenant Act 1954 ("the 1954 Act"). The object of the legislation is to confer on business tenants security of tenure (that is, the right to renew their tenancy at the end of the lease) so long as they comply with their obligations as tenants. The proposed Order would change the operation of the 1954 Act as it applies to the renewal or termination of business tenancies. The purpose of the Order is to improve the operation of the 1954 Act by making the procedures for the renewal and termination of business tenancies "quicker, easier, fairer and cheaper".[2]

3. The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolution or report of the Committee, or to any other representations made during the period for parliamentary consideration.[3] Our discussion of matters arising from our examination is set out below.

3 Findings of our previous report

4. The proposal for the Order was laid on 22 July 2002, and we reported our findings to the House on 11 December 2002.[4] We concluded that the proposals appeared to represent a welcome improvement to the working of the 1954 Act, and we were broadly happy that they should be proceeded with.

1 Copies of the draft order and statement are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office website:www.cabinetoffice.gov.uk/regulation/act/proposals.htm .

2 Explanatory statement accompanying the proposed order (laid on 22 July 2002), para 3

3 Standing Order No. 141(7)

4 Second Report of Session 2002–03, *Proposal for the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003*, HC (2002–03) 182

5. We raised concerns over two aspects of the proposal, in respect of procedures for excluding security of tenure and for agreements to surrender, and in respect of the form of one schedule to the proposed Order. During our consideration of the proposal, we also asked the Department to explain how two additional burdens to be imposed by the proposal could be justified in terms of the Regulatory Reform Act.[5] At a late stage in our consideration of the proposal the Department also indicated a further amendment which it thought it would be desirable to make to the proposed Order when it was laid for 'second-stage' scrutiny. We undertook to consider the matter further in our report on the draft Order.[6]

Declarations on contracting out of security of tenure and surrenders

6. The 1954 Act (as amended by the Law of Property Act 1969) allows the parties to a business tenancy to agree to the exclusion of the tenant's statutory right to security of tenure, if the agreement is approved by the court. Similarly, it allows the parties to make an agreement for the surrender of the tenancy, with the court's approval.

7. The Law Commission's 1992 review of the 1954 Act found that the requirement of the approval of the court did not achieve the objective of providing an effective filter to prevent landlords from abusing what is generally assumed to be their superior bargaining position over the renewal of leases.[7] While accepting the importance of safeguards to ensure that the tenant or prospective tenant understands the implications of contracting out of the renewal provisions, the Commission concluded that this could more effectively be achieved without the unnecessary formality, delay or expense of a court application. It recommended that the parties should be able to opt out of the renewal provisions without securing court approval, subject to certain requirements.

8. The proposal for the Order laid before Parliament in July 2002 contained two alternative procedures for parties to follow in the event that they wished to contract out of security of tenure:

a) At least 14 days before the tenant enters into a tenancy, or becomes contractually bound to do so, the landlord must serve on the tenant a notice which contains a prominent "health warning" stating the consequences for the tenant of giving up his statutory rights of renewal. The wording of the notice is required to be substantially as prescribed in Schedule 1 to the Order. A reference to the "health warning" must be contained in, or endorsed on, the lease.

b) If the minimum 14 day notice requirement is not met, the landlord must still serve the notice with the "health warning" on the tenant. In addition, the tenant, or his representative, must sign a declaration before an independent solicitor under the Statutory Declarations Act 1835. This statutory declaration should state that the tenant has received the "health warning", read it and accepts the consequences of entering into the agreement which excludes security of tenure. A reference to both the "health

5 *Ibid*., Appendix A, Qq 6–10 (letter from the Clerk of the Committee to the Department)

6 See below, paras 40–42

7 *Business Tenancies: A Periodic Review of the Landlord and Tenant Act 1954 Part II* (Law Com No 208, 1992)

warning" and to the statutory declaration must be contained in, or endorsed on, the lease.

9. We raised a number of issues concerning the proposed procedures with the Department, in particular concerning the requirement for a statutory declaration to be used in cases where the 14 day notice requirement was not met, and concerning the tenant's receipt of the "health warning" where it was.[8] We accepted the Department's arguments concerning the provision for a statutory declaration in cases where the 14 day notice requirement was not met. Nevertheless, we considered that, even where the 14 day notice requirement had been met, the tenant should be required to sign a simple prescribed declaration indicating that he had received the "health warning" and accepted the consequences of entering into either an agreement to exclude security of tenure or an agreement to surrender.[9]

Format of statutory declaration

10. We were also concerned about the format of the statutory declaration as prescribed in Schedules 2 and 4 to the proposed Order. We considered it possible that the procedure followed by commissioners for oaths in attesting and signing declarations and exhibits, when applied to the statutory declaration as originally drafted, might result in a tenant being charged an unnecessary fee.[10]

4 The Department's response to our report

11. The Department's response to the specific recommendations made and issues raised in our report is set out in the explanatory statement accompanying the draft Order.[11]

Amendments

12. In response to our concerns on **declarations**, the Department has amended the relevant Schedules to the draft Order, which set out the procedure for concluding agreements for contracting out of security of tenure or agreements to surrender.[12] These schedules now make provision, in cases where the 14-day notice period has been complied with, for a tenant to sign a simple declaration that he has received the notice and has accepted the consequences of entering into the agreement to exclude security of tenure or the agreement to surrender.

13. The Department recognises that this requirement places a new burden on the landlord. However, it considers that the burden is justifiable on the ground of maintaining necessary protection for the tenant, and that as such it is proportionate to the benefit expected to

8 HC (2002–03) 182, paras 38–50

9 *Ibid.*, para 50

10 *Ibid.*, paras 201–02

11 Explanatory statement, paras 28–29

12 Schedules 2 (contracting out) and 4 (surrender).

result from its creation; that, in relation to the other provisions of the draft Order, it strikes a fair balance between the public interest and the interest of the persons affected by it; and that it is desirable as an added safeguard for the tenant.[13] **We agree**.

14. The Department has made consequent amendments to Schedules 1 and 3 of the draft Order, which set out the wording of the "health warning" notices to be received by prospective tenants before committing themselves to leases excluding security of tenure, or by tenants contemplating entering into agreements for the surrender of tenancies.[14] The "health warning" as originally drafted made provision for signature by both landlord and tenant. As a tenant entering into either form of agreement will now have to sign some form of declaration in all cases, the Department considered that the provision for the "health warning" itself to be signed and dated is "a purely bureaucratic hurdle" which provides no additional protection to the tenant. It has therefore removed the provision from both schedules. **We agree that in the light of the amendments made to the schedules as a result of our representations, the requirement that the "health warning" itself be signed is no longer necessary.**

15. **We are satisfied that the draft Order has been amended in a way which ensures a necessary protection for the tenant entering into an agreement to contract out of security of tenure or to surrender a lease.**

16. In addition, the Department has now amended the prescribed form of the **statutory declaration** in both schedules, to ensure that the form of the notice cannot be construed as a separate exhibit. The Department considers that this amendment does not substantially alter the burden imposed by the original proposal. **We agree**.

17. **We are satisfied that the format of the statutory declaration, as set out in Schedules 2 and 4 to the draft Order, no longer raises the possibility of the charging of an unnecessary fee to tenants.**

Analysis of new burdens

18. During our scrutiny of the proposal for the Order, we identified two proposals which we considered could impose burdens, but had not been identified as such by the Department. We asked whether the Department agreed with our analysis, and if so how it justified the imposition of these burdens in terms of the Regulatory Reform Act 2001 (the 2001 Act). The Department agreed that the proposals imposed new burdens,[15] and undertook to provide the explanation we requested in the explanatory statement submitted with the draft Order.[16]

13 Explanatory statement, para 28

14 Explanatory statement, paras 42–44

15 HC (2002–03) 182, Appendix B, paras 20, 26

16 Explanatory statement, annex F

New burden: time limit on interim rent

19. Article 18 of the draft Order provides that both parties to a business lease which is being renewed are able to apply to the court for a determination of interim rent (that is, rent payable pending the renewal of the tenancy), but that such an application may not be made more than six months after the termination of the old tenancy.

20. We considered that the imposition of a time limit on applications for interim rent appeared to constitute a new burden on both parties. We nevertheless considered that it met the proportionality requirements of the 2001 Act, in that a burden in the form of a restriction of the right of one party to apply for interim rent was proportionate to the benefit to the other party of not having to respond to an application for interim rent made a long time after the termination of the tenancy.[17] The Department has confirmed that it shares this analysis: "we consider [the burden] proportionate to the benefit of preventing potential open-ended liability for the other party [to the lease]."[18]

New burden: confirmation of Esselte *decision*

21. The proposal for the Order included a provision[19] to confirm the Court of Appeal's decision in the *Esselte* case[20] that the tenant can terminate the tenancy by quitting the property before the end of the contractual fixed term. Until that decision it was commonly assumed that the tenant of a fixed term tenancy could only terminate the tenancy (in accordance with section 27(1) of the Act) by giving written notice at least 3 months before the contractual term date.

22. We considered that this provision constituted the re-enactment of a burden on landlords and that, on the whole, this burden was proportionate to the benefit to the tenant of being able to vacate the premises without giving notice.[21] The Department agrees with this view: "we consider that this burden is proportionate, bearing in mind that if we adopted the alternative approach of requiring all tenants of fixed term tenancies to give three months notice, the burden on tenants would be significantly greater than the one we are proposing to impose on landlords."[22]

23. **On the basis of the explanatory statement, we are satisfied that the responsible Minister has had due regard to our previous report on the proposal for the draft order.**

17 HC (2002–03) 182, para 137

18 Explanatory statement, Annex F, para 5

19 New s 27(1A), inserted by article 25(1) of the draft Order

20 *Esselte AB v Pearl Assurance plc* [1997] 1 WLR 891

21 HC (2002–03) 182, para 165

22 Explanatory statement, Annex F, para 11

5 Other representations

Report of the House of Lords Delegated Powers and Regulatory Reform Committee

24. The House of Lords Committee reported on the proposal for the Order on 12 December 2002.[23] It concluded that the proposal was satisfactory and appropriate to be made in all respects save the provisions amending the arrangements for contracting out of security of tenure and the surrender of tenancies. The Committee believed that the evidence presented did not support the Department's argument that the existing arrangements for contracting out (i.e. the requirement for approval by the court) in effect made the protection for tenants illusory. In addition the Committee was not satisfied that the present procedure did not deter landlords from contracting out. It was therefore not satisfied that the proposed arrangements would maintain an appropriate level of necessary protection for tenants.

25. The Department issued a written statement on 24 February 2003 announcing the action it intended to take in response to the Committee's report.[24] It commissioned research into the outcome of recent applications to the courts for approval of arrangements to exclude security of tenure,[25] and undertook to consult further with organisations representing small businesses. The report of the research project was sent to both Committees on 26 June 2003, together with copies of the responses received to this further consultation.[26]

26. The Department concluded that there was no evidence to support the view that judges decided applications for approval of contracting out on the merits of the bargain between landlord and tenant, or that the present process deterred landlords in a dominant market position from exploiting that position by insisting on a contracted-out tenancy. [27] It considered that the only protection afforded by the application to court—an assurance that the tenant understands the nature and effect of the bargain he is entering—is at least as effectively continued by the proposed "health warning" requirement.

27. The Lords Committee was also concerned that the reforms would lead to an increase in the scale of contracting out. The Department argued that there has already been an increase in applications for approval of contracting out agreements under the present regime (from 11,651 applications in 1986 to around 50,000 annually at present).[28] It pointed to a number of factors in the present rental market which have boosted the trend towards shorter leases and contracting out, and considered that this trend would continue

23 Fourth Report of Session 2002–03, HL Paper (2002–03) 22

24 HC Deb, 24 February 2003, col. 1 WS

25 The research was undertaken by a team from Bristol University and Sheffield Hallam University: explanatory statement, paras 11–12.

26 For a summary of the research and consultation responses, see respectively Annexes D and E to the explanatory statement.

27 Explanatory statement, para 20

28 Explanatory statement, para 23

whether or not the proposed reforms were implemented. It therefore considered that the proposed reforms would make the process of contracting out less burdensome, without removing any necessary protection.

28. The Lords Committee considered the additional evidence submitted by the Department and concluded that, in the light of the evidence provided, the proposed "health warning" procedure would provide as effective a level of protection as the present court application procedure for tenants entering into agreements to contract out or to surrender a tenancy. It has since recommended that the draft Order is satisfactory to be submitted to the House of Lords for approval.[29]

Representations by the Sounding Board

29. The Sounding Board established by the Department to discuss the proposal continued to operate during, and after, the period for Parliamentary consideration. In our report on the proposal, we praised the Sounding Board process as 'a technique of obvious benefit' in consultations on proposed orders of particular complexity. We are happy to repeat our support for this consultation technique.

30. Sounding Board members made representations on the following points:

- court orders and subleases;
- termination dates (when the tenant does not wish to renew);
- landlord's manipulation of the timing of renewal applications;
- agreements for leases with contracting out provisions;
- specification of the premises in the "health warning"; and
- the contents of a court order ending a tenancy following an application by the landlord.

The amendments made to the Order in response to these representations are discussed below.

Additional representations

31. Ladbrokes Ltd made vigorous representations to the Department, complaining that the provisions in respect of interim rent had been subject to 'radical revision' between consultation and proposal stage, and that the provisions as contained in the proposal would operate in the interest of landlords. The Department argued that the changes to the interim rent proposals had been made following responses received as a response to consultation, discussions in the Sounding Board process and discussions with representatives of small business tenants, and that the changes had been discussed in full in the explanatory statement accompanying the proposal.

29 Twenty-fifth Report of Session 2002–03, HL Paper (2002–03) 167, paras 1–11

32. We concluded in our earlier report that none of the changes made between consultation and proposal stage was significant enough to have warranted re-consultation.[30] We remain of this view.

6 Further amendments

33. The Department has indicated a number of amendments made to the draft Order, principally as a result of consultations with its Sounding Board. It believes that the amendments are of 'a minor, tidying up nature' and do not make any fundamental changes to the proposals.

Landlord's application to court

34. Under the Order, either party—the landlord or the tenant—would be able to apply to the court for the renewal of a tenancy. The landlord would also be able to apply to the court to terminate the tenancy without renewal. In order to prevent duplication of proceedings, the original draft Order provided that neither party could apply to the court if the other had already done so.

35. The Department has now identified a potential for abuse of these provisions. Given that the Civil Procedure Rules allow two months for the service of an application, the concern is that the landlord could make an application to the court exactly two months before the deadline for making applications, but then deliberately fail to serve the application. This would mean that the tenant could not make an application for the renewal of a tenancy, because the landlord had already made an application. After the expiry of the two month period for service of the landlord's application, the tenant would be unable to make an application to the court for renewal of the tenancy, since the deadline for making such an application would have expired.

36. To obviate this possible abuse, the Department has amended the draft Order to provide that a party may not apply to court for a renewal of the lease if the other party has made an application *and the application has been served*. Accordingly, in the situation envisaged above the tenant would not be precluded from making an application for renewal of the tenancy during the two month period which the landlord had for service of his application. The Department believes that there is a slight risk, once a party has made an application, of a duplicate application from the other party being made before the first application has been served. It nevertheless considers that the possible risk is manageable by the courts, which will not allow duplicate applications to run in parallel.

37. **We consider that this amendment to the draft Order is necessary and appropriate, and is not significant enough to have warranted re-consultation.**

30 HC (2002–03) 182, para 183

Landlord's successful application for termination without renewal

38. Under new section 29(2) (inserted by article 5 of the draft Order), a landlord may apply to the court to terminate a business tenancy without renewal. If the application is successful, the draft Order provides that the court shall make an order to terminate the current tenancy without the grant of a new tenancy. According to the Department, concerns have been raised that the proposal as originally drafted did not give a sufficiently clear indication as to when a tenancy which has been terminated on application should end. The draft Order has therefore been amended to provide that the court's order for the termination of the tenancy shall be in accordance with section 64 of the 1954 Act; that is, that a tenancy which has continued, by reason of court proceedings, beyond the termination date provided for in a landlord's notice of termination or in a tenant's request for a new tenancy shall end, if not renewed, three months after the end of proceedings or any subsequent appeal.

39. The Department considers that this change may impose a burden by restricting the court's freedom to determine the date of the end of a tenancy. It nevertheless notes that both parties may vary the date set by the court by mutual agreement. It therefore considers that the new burden is proportionate to the benefit expected to result from its creation; that, in relation to other provisions of the draft Order, it strikes a fair balance between the public interest and the interest of the persons affected by it; and that it is desirable on the grounds of certainty.[31]

40. **We consider that this provision is a necessary and desirable amendment.**

Transitional provisions: covenants for subletting

41. At a late stage during the period for Parliamentary scrutiny of the proposal for the Order, the Department notified us of a potential difficulty in relation to certain covenants in existing leases.[32] Such covenants refer to the existing procedures under section 38 of the 1954 Act, and in particular require tenants wishing to sublet business premises to obtain the court's approval to an agreement between the parties for the subletting to be excluded from security of tenure. As the provision for court approval will be abolished under the proposed reforms, it would in future be impossible for such covenants to be complied with if the draft Order were to be made as originally proposed.

42. The Department has inserted a transitional provision into the draft Order, which would require any references to the existing section 38(4) procedures, in leases taken out before the provisions of the Order take effect, to be construed as references to the use of the procedures specified in the new section 38A. This provision is substantially in the same form as the proposed amendment notified to us by the Department in December 2002.[33]

43. **We consider that this transitional provision is a necessary and desirable amendment.**

31 Explanatory statement, para 37

32 See HC (2002–03) 182, Appendix D, p 64

33 *Ibid.*

Transitional provisions: agreements for lease

44. The Department has identified a further difficulty arising from the provisions of certain agreements for leases made before the Order comes into effect. Such agreements provide that a landlord may agree to the future grant of a lease on the condition that the parties first contract out of security of tenure by obtaining a section 38 court order. Once section 38 orders are abolished, it will be impossible for parties to such a lease to comply with these requirements. It would be impractical to provide that any such references in pre-existing leases should be construed as references to the new contracting out procedures, as they require the tenant to receive a "health warning" notice before he enters into the tenancy or becomes contractually bound to do so. In the situation at issue, the tenant is already contractually bound to take the lease.

45. The Department has proposed that the existing arrangements for applications for a court order should continue to apply in relation to agreements for leases entered into before the new provisions come into force.[34] This transitional provision will only apply until all such existing arrangements have come into effect, and will therefore be for a limited period.[35] The Department argues that the provision does not impose any new burden, but preserves the existing law in a case where it has proved impractical to reform it.

46. **We agree that it is impractical to reform the law in the limited circumstance indicated by the Department. We are therefore content that the transitional provision should be inserted into the Act.**

7 Territorial extent

47. The provisions of the Order, which amend Part II of the 1954 Act, apply to Wales as well as to England.

48. Section 40 of the 1954 Act is to be repealed and restated with modifications. This involves a modification of the powers of the National Assembly for Wales, as the Assembly has powers to prescribe notices under that section.[36] Consent of the Assembly must therefore be obtained to the making of the Order.[37]

49. The Department has indicated that consent has already been given in principle by the relevant minister in the Welsh Assembly Government.[38] It intends to seek the Assembly's formal agreement before the Order is made.

34 Article 29(4) of the draft Order

35 Explanatory statement, para 41

36 Explanatory statement, para 46

37 Section (1)(5) of the 2001 Act

38 Explanatory statement, para 47

8 Recommendation

50. In accordance with Standing Order No. 141(15), we recommend unanimously that the draft Order be approved.

II Draft Regulatory Reform (Gaming Machines) Order 2003

9 Report under Standing Order No. 141

51. The Regulatory Reform Committee has examined the draft Regulatory Reform (Gaming Machines) Order 2003 in accordance with Standing Order No. 141. We recommend unanimously that the draft order be approved.

10 Introduction

52. On 16 September 2003 the Government laid the draft order before Parliament, together with an explanatory statement from the Department for Culture, Media and Sport (the Department).[39] We have already reported on the proposal for this order, which would amend Part III of the Gaming Act 1968 ("the 1968 Act").[40]

53. The House has instructed us to examine the draft order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolution or report of the Committee, or to any other representations made during the period for parliamentary consideration.[41] Our discussion of matters arising from our examination is set out below.

11 Findings of our previous report

54. The proposal for the order was laid on 13 March 2003, and we reported our findings to the House on 20 May 2003. We believed that the proposal represented an appropriate use of the regulatory reform order-making procedure to remove the restrictions which prevented the application of modern money-handling technology to gaming machines, and we considered that in general the protections provided for in the draft order and associated guidelines to be issued by the Gaming Board were sufficient.

55. We considered that the upper limit to the value which a player of a gaming machine should be able to commit to play at any one time (the 'cut-off') should be equivalent to that of the highest-value coin in general circulation (at present £2). We were content that this limit should be expressed in the Gaming Board guidelines rather than being set out on the face of the draft Order.[42]

39 Copies of the draft order and statement are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office website:www.cabinetoffice.gov.uk/regulation/act/proposals.htm .

40 Thirteenth Report of Session 2002–03, *Proposal for the Regulatory Reform (Gaming Machines) Order 2003*, HC (2002–03) 715

41 Standing Order No. 141(7)

42 HC (2002–03) 715, paras 89–90

56. We noted that the Department had dropped a requirement for free-standing smartcard readers to be located on premises where jackpot machines equipped with smartcard readers were operated. We considered that the provision of such readers would constitute a form of necessary protection, and recommended that the Gaming Board guidelines should be amended to provide an equivalent level of protection for players seeking to get a readout of the credit remaining on a smartcard by inserting it into a reader in a gaming machine.[43]

57. We believed that there was no good reason for the Gaming Board guidelines to provide for the retention of small cash residues on the 'bank meter' of a jackpot machine in cases where electronic means of payment (such as smartcards) were used to pay for play. We therefore recommended that the Gaming Board guidelines should be amended to provide that players using jackpot machines which can accept and pay out value by electronic means should be able to collect the full value owing to them on the machine's bank meter at any reasonable time.[44]

58. We identified an apparent incompatibility between the draft order and the Gaming Board guidelines in respect of the provisions for redemption of smartcards for cash value. We considered that a gaming machine operator who followed the Gaming Board guidelines in this respect might find himself in breach of the law as amended by the draft order.[45]

59. Some responses to the Department's consultation highlighted the possibility that an alteration to the permitted methods of payment might alter the behaviour patterns of regular gamblers and could exacerbate problem gambling behaviour. We considered that research should be undertaken on the effects of these new payment methods on gambling behaviour in general and problem gambling in particular.[46]

60. We found that the drafting of the order was insufficiently clear in its application to higher-value AWP machines.[47] We therefore recommended that the relevant provisions of the draft order should be redrafted to make it clear that higher-value AWP machines may accept only coins and banknotes as payment for play.[48]

61. Given the extent to which provision for detailed operation of the proposed payment methods would be set out in Gaming Board guidelines rather than legislation, we indicated that we would be prepared to give informal consideration to a draft of the guidelines as amended before they were laid before Parliament together with the draft Order.

43 *Ibid*., paras 114–118

44 *Ibid*., para 122

45 *Ibid*., paras 125–26

46 *Ibid*., paras 134–43

47 AWP stands for 'amusement-with-prizes'.

48 Thirteenth Report, para 160

12 Other representations

62. The Department indicates that besides the reports of the two Committees it received no other representations during the period for Parliamentary consideration.

Report of the House of Lords Delegated Powers and Regulatory Reform Committee

63. The House of Lords Committee on Delegated Powers and Regulatory Reform reported on the proposal for the Order on 7 May 2003.[49] It considered that, save for one point which it wished addressed by the Department, the draft order was an appropriate use of the Regulatory Reform Act 2001 Act and met its requirements.

64. The Lords Committee considered the issue of the proposed '£2 cut-off' and its inclusion in Gaming Board guidelines in relation to the necessary protection to be continued by the Order. It believed that the Gaming Board would be able to enforce its guidelines effectively, thereby maintaining the necessary protection which it considered was provided by the '£2 cut-off'. However, it considered that since there was to be no provision for Parliamentary scrutiny of the content of the guidelines in future, provision for the protection would be more effectively made if it were to be included on the face of the Order.

13 The Department's response to our report

Amendments to the draft Order

Cash payments in higher-value AWP machines

65. The Department accepted that the draft Order should be amended to make it clear that payment of the charge for playing higher-value AWP machines shall be in cash only. It has proposed a new section 34(5BA) of the 1968 Act, to be inserted by article 2(11) of the draft Order, which will effect this change.[50]

66. **This amendment to the draft Order satisfies the drafting concerns we raised in our earlier report.**

49 Nineteenth Report of Session 2002–03, HL Paper (2002–03) 103, paras 1–24

50 Explanatory statement, para 25

The '£2 cut-off'

67. The Department has taken into account the issues raised by both Committees over the '£2 cut-off'. The Lords Committee believed that the '£2 cut-off' should be provided for on the face of the Order. We believed that the necessary protection would be maintained by including provision for the 'cut-off' in Gaming Board guidelines, and expressing the upper limit in terms of the highest-value coin in general circulation (rather than prescribing a £2 limit).

68. The Department has accepted the recommendation of the Lords Committee that provision for a 'cut-off' should be made on the face of the Order, rather than in guidelines. It has redrafted the Order accordingly.[51]

69. The Department met our recommendation that the level of the 'cut-off' should be expressed in terms of the highest-value coin in general circulation, though it has incorporated this provision into the draft Order as well as including it in the guidelines.[52] The Gaming Board guidelines have been amended to reflect the provisions to be included in legislation. The Lords Committee has already reported that the amendments to the draft Order and the guidelines satisfy its concerns.[53]

70. **We are content that the manner in which the draft Order and the Gaming Board guidelines have been amended establish a 'cut-off' equivalent to the one which already exists in practice. We consider that this is sufficient to continue a necessary protection. The 'cut-off' has been defined in a way which allows sufficient flexibility without recourse to further legislation.**

Amendments to the Gaming Board guidelines

71. Following our report on the proposal, the Gaming Board, in discussion with the trade association BACTA, prepared a revised draft of its guidelines on the operation of the new payment methods in respect of jackpot and higher-value AWP machines. The Department sent this revised draft to the Commons and Lords Committees for informal examination on 2 July 2003. We considered the revised guidelines at a subsequent meeting and wrote to the Department with our comments on 9 July.[54] The guidelines which accompany the draft Order have been further revised in the light of our comments, to remove a drafting inconsistency.[55]

51 Article 2(4) inserts new sections 31(3D) to 31(3H) into the 1968 Act, making provision for a 'cut-off' in respect of jackpot machines.Article 2(11), inserting new sections 34(5BB) to 34(5BF) makes a similar provision for higher-value AWP machines.

52 Article 2(4), inserting new section 31(3E), and article 2(11), inserting new section 34(5BC), provides that the 'cut-off' for both types of machine is equivalent to the 'highest coin value' (a term defined in new sections 31(3H) and 34(5BF) respectively).

53 HL Paper (2002–03) 167, para 16

54 Not printed.

55 Explanatory statement, para 39

Smartcard readers and inducements to play

72. The Gaming Board guidelines have been revised to provide that when a player first puts a smartcard into a jackpot machine, whether to play the machine or for any other purpose, the machine will do no more than show the amount of credit on the card. The revised guidelines state that "when being used to display the contents of the smartcard only, the machine will offer no inducement for the player to commit money for play."[56]

73. **We are content that the amendment to the guidelines in this respect maintains the protection for the player afforded by the existing law.**

Retention of surplus credit

74. The guidelines have been amended to specify that where a smartcard is used to play a jackpot machine, the entire credit remaining to the player on the play, bank and residue meters of the machine must be available for transfer back to the smartcard at any reasonable time, and certainly when there is insufficient credit on the play meter to play a further game.[57]

75. The guidelines now reflect the principle that where electronic means of payment are used, a player is able to collect the full value of any credit owing to him which is payable by such means. The amended guidelines are in this respect now consistent with the provisions for payment to smartcards which are contained in the draft Order.[58] **We consider that this amendment of the guidelines satisfies the concerns we raised in our earlier report.**

Other matters

Problem gambling

76. The Department states that the Gambling Industry Charitable Trust, recommended by the report of the independent Gambling Review, is now in being, and is initiating a research programme which will examine the causes of problem gambling.[59] GamCare, a charity which provides information and counselling to problem gamblers, has agreed to monitor calls to its helpline to see whether there is evidence that the new machines are causing problems. The Department states that it will to monitor the Trust's research programme and the monitoring reports from GamCare. If the evidence from these sources suggests that the change in payment methods is contributing to problem gambling behaviour, the Department and the Gaming Board have undertaken to address the issue.[60]

77. **We welcome the assurances which the Department has thus far given**. The Department notes that the proposed Gambling Commission, to be introduced by the forthcoming Gambling Bill, will have greater powers to issue binding guidance on the

56 Explanatory statement, paras 34–35

57 Explanatory statement, para 38

58 New sections 31(3A), 31 (3B) and 31(3C), inserted by article 2(4) of the draft Order.

59 Explanatory statement, para 16

60 Explanatory statement, para 17

industry which may help to address problem gambling behaviour. **We encourage the Joint Committee on the draft Gambling Bill to give full scrutiny to the Government's proposals in this area**.

Notification to the European Commission

78. The Department states that the technical specifications for gaming machines contained in the draft Order and guidelines are of a kind which falls within the scope of European Directive 98/34/EC. They must therefore be notified to the European Commission, and a delay of at least three months must be allowed to elapse before they come into force, to allow for comments or objections from other Member States.

79. The draft of the order contained in the proposal laid before Parliament in March 2003, together with the guidelines as they then stood, were notified to the Commission on 7 March 2003. The prescribed period of delay expired on 9 June 2003. The Department has indicated that no comments or objections were received from the Commission or any Member State.[61]

80. The draft Order and guidelines have been modified from the versions notified to the Commission in March 2003, and the Government has therefore made a further notification to the Commission in respect of the revised versions. Should Parliament approve the draft Order, Ministers will not sign it into law until three months has elapsed from the date of notification and no objection has been received. If an objection is received from the Commission or a Member State or States, the period of delay will be extended to six months. [62]

81. **On the basis of the explanatory statement, we are satisfied that the responsible Minister has had due regard to our previous report on the proposal for the draft order.**

14 Recommendation

82. **In accordance with Standing Order No. 141(15), we recommend unanimously that the draft order be approved.**

61 Explanatory statement, para 43

62 *Ibid*., para 44

Formal minutes

Tuesday 21 October 2003

Members present:
Mr Peter Pike, in the Chair

Mr Russell Brown	Mr John MacDougall
Brian Cotter	Mr Denis Murphy
Mr Dai Havard	Brian White
Mr Mark Lazarowicz	

The Committee deliberated.

Draft Report, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Paragraphs 1 to 82 read and agreed to.

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

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

[Adjourned till Tuesday 28th October at 9.30 a.m.

Reports from the Regulatory Reform Committee since 2001

The following reports were published during the previous Session of Parliament by the Regulatory Reform Committee under its previous name, the Deregulation and Regulatory Reform Committee.

Session 2001-02

First	Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2001	265
Second	Draft Regulatory Reform (Special Occasions Licensing) Order 2001	388
Third	Draft Deregulation (Disposals of Dwelling-Houses By Local Authorities) Order 2001	449
Fourth	Proposal for the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	583
Fifth	Draft Deregulation (Restaurant Licensing Hours) Order 2002	599
	Draft Deregulation (Bingo and other Gaming) Order 2002	
	Proposal for the Regulatory Reform (Golden Jubilee Licensing) Order 2002	
Sixth	Proposal for the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	663
Seventh	Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002	677
	Draft Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	
Eighth	Proposal for the Regulatory Reform (Carer's Allowance) Order 2002	691
Ninth	Draft Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002	708
	Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	
Tenth	Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	807
	Draft Regulatory Reform (Carer's Allowance) Order 2002	
First Special Report	Further report on the Handling of Regulatory Reform Orders	389

The following Reports were published by the Regulatory Reform Committee during the previous Session of Parliament under its current name.

Session 2001-02

Eleventh	Draft Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	867
Twelfth	Proposal for the Regulatory Reform (Removal of the 20 Member Limit) Order 2002	1104
Thirteenth	Proposal for the Regulatory Reform (Sugar Beet Research and Education) Order 2003	1247
Fourteenth	Draft Regulatory Reform (Removal of 20 Member Limit in Partnerships Etc.) Order 2002	1303
Second Special Report	The Operation of the Regulatory Reform Act: Government Response to the Committee's First Special Report of Session 2001-02	1029
Third Special Report	The Handling of Regulatory Reform Orders (III)	1272

The following reports have been published during the present Session of Parliament.

Session 2002-03

First	Proposal for the Regulatory Reform (Credit Unions) Order 2002	82
	Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2002	
Second	Proposal for the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003	182
Third	Proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	183
Fourth	Draft Regulatory Reform (Special Occasions Licensing) Order 2002	193
Fifth	Proposal for the Regulatory Reform (Housing Management Agreements) Order 2003	328
Sixth	Draft Regulatory Reform (Credit Unions) Order 2003	329
	Draft Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	
Seventh	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	436
Eighth	Draft Regulatory Reform (Housing Management Agreements) Order 2003	520
Ninth	Proposal for the Regulatory Reform (British Waterways Board) Order 2003	521
Tenth	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	549
Eleventh	Draft Regulatory Reform (Sugar Beet Research and Education) Order 2003	591
Twelfth	Draft Regulatory Reform (British Waterways Board) Order 2003	682
Thirteenth	Proposal for the Regulatory Reform (Gaming Machines) Order 2003	715

All reports are available from The Stationery Office.