House of Commons

Regulatory Reform Committee

The operation of the Regulatory Reform Act 2001: a progress report

First Special Report of Session 2002–03

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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.

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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.

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Summary

Since the enactment of the Regulatory Reform Act 2001, 14 regulatory reform orders have been made. Prior to becoming law, each of these orders was examined by the Regulatory Reform Committee, firstly in the form of a proposal for an order and secondly in the form of a draft order. Such examination is required as part of the two-stage "super-affirmative" procedure for Parliamentary scrutiny specified in the Regulatory Reform Act 2001.

This report continues our discussion of the handling of regulatory reform orders set out in our special report to the House in October 2002. That report considered the first year of operation of the 2001 Act; this report considers the second year of the Act's operation. The Government is committed to carrying out a limited review of the operation of the Act, and constitutional and procedural issues associated with it, in April 2004. We will wish to consider the outcome of that review and report our findings to the House in due course.

1 Introduction

1. A year has passed since we first made a progress report to the House on the operation of the Regulatory Reform Act 2001.[1] That report was based on evidence received from the Government, in the form of a memorandum submitted to us in May 2002 and a subsequent oral evidence session with the then Minister for Regulatory Reform, Rt Hon Lord Macdonald of Tradeston.

2. We found the process of conducting an annual review to be helpful, as it enabled us to step back from the detailed scrutiny of regulatory reform orders required by the 2001 Act to consider broader issues about the operation of the Act. Consequently, in May 2003, we agreed to repeat the process for the 2002–03 year, and we invited the Cabinet Office to submit a memorandum on the operation of the Act. Without wishing to be exhaustive, we suggested that the memorandum could usefully address the following questions:

- Are there any outstanding issues about the operation of the regulatory reform procedure that continue to be of concern to the Government? In the Government's view, have any new issues about the operation of the process arisen since the publication of our special report in October 2002?
- Does the Government consider that the Act is functioning in any respect other than in the way in which Parliament intended?
- What is the likely flow of regulatory reform orders in the forthcoming year? How many proposals are likely to be laid, and how complex are these proposals likely to be?

3. We received the Cabinet Office memorandum in June 2003. Subsequently, on 1 July, we took oral evidence from the Minister responsible for regulatory reform, the Minister for the Cabinet Office, Mr Douglas Alexander MP, and officials from the Cabinet Office's Regulatory Impact Unit (RIU).[2] This report is based both on the memorandum and on the oral evidence session. It focuses on the period between our evidence session with Lord Macdonald, on 2 July 2002, and the corresponding session with Mr Alexander, on 1 July 2003, although it also takes into account events since that date. The intervening period is here referred to as "the 2002–03 year".[3]

4. One section of the Cabinet Office memorandum contains several minor inaccuracies in respect of the requirements of the Act.[4] As these matters were too minor and technical to raise in the course of oral evidence, we wrote to the Minister after the oral evidence session and invited him to comment on these inaccuracies in writing. Both our letter to the

1 Third Special Report of Session 2001–02, *The Handling of Regulatory Reform Orders (III)*, HC (2001-02) 1272

2 The RIU is the unit in the Cabinet Office responsible for co-ordinating the Government's regulatory reform programme.

3 As distinct from the parliamentary sessions: the 2001–02 Session ran from 20 June 2001 to 7 November 2002; the 2002–03 Session commenced on 13 November 2002 and is expected to end in November 2003.

4 Appendix 1, para 3.2: this lists what the Government regards as the advantages of the way in which the Regulatory Reform Act delivers reforms.

Minister and his response are appended to this report. We deal below with a substantive issue which was raised in correspondence with the Minister.

Own-initiative amendments to draft orders between first and second stage scrutiny

5. The Regulatory Reform Act provides that in preparing a draft regulatory reform order for submission to Parliament for approval under section 1 of the Act (i.e. for 'second-stage' scrutiny), the responsible Minister shall have regard to "any representations made during the period for Parliamentary consideration and, in particular, to any resolution or report of, or of any committee of, either House of Parliament" with regard to the proposal for the order laid for 'first-stage' scrutiny.[5]

6. This provision requires the Minister to take into account all representations received during the period for Parliamentary consideration when preparing the draft order. The provision does not restrict the changes which may be made to those made which are in the light of representations or Parliamentary reports.

7. In his letter to us the Minister states that

> the fact that the Regulatory Reform Act assumes that changes will be made in response to representations does not preclude changes being made for other reasons . . . should a department wish to make a beneficial amendment, then that amendment should be able to be made. It would be illogical to ignore changes that improved the working of the order, so long as the change could not be seen in any way to alter the scope of the proposal that was originally consulted on.[6]

The ability to provide for amendments to be made to draft orders between stages is one of the strengths of the 'super-affirmative' procedure, which makes provision for a form of pre-legislative scrutiny of regulatory reform orders. As the Minister states, it would be odd if a Department identified a defect in an order after the first stage of scrutiny, but was not able to make a change to improve the working of the order or to close a loophole because representations had not been made to that effect.

8. We are nevertheless concerned that departments should not be able to make changes to draft orders between first and second stage which alter the nature or scope of the order. The Minister has stated that if a suggested change is likely to affect the persons consulted on the proposal for the order so that they might have expressed a different view in response to the consultation, then the department concerned would be expected to undertake further consultation on the issue. He has indicated that if departments are unclear as to the substantive effect of the proposed changes, they should seek without prejudice advice from the Parliamentary committees on the specific amendments proposed, the reason for making the changes and their potential effect.[7]

5 Section 8(4) of the 2001 Act

6 Appendix 3

7 *Ibid.*

9. **We strongly agree with the Minister's view that Departments should be expected to get their orders right first time. We nevertheless consider that it may be sensible to allow for minor changes to be made to draft orders between first and second-stage scrutiny on the Department's own initiative, if it is clear that those changes would improve the working of the order and would not involve changes of principle on which consultees would be expected to have a view. We consider that all such changes should be identified as such, and explained in full, in the explanatory statement laid before Parliament alongside the draft order. If, in our view, the amendments are of sufficient substance that the department concerned should have consulted upon their likely effect, we will decline to recommend approval of the draft order until such consultation has taken place.**

10. The Minister considers that it would be right for Departments to seek without prejudice advice on specific amendments not arising from representations, the reasons for making such changes and their potential effect. We have indicated in earlier Reports that we are prepared to give without prejudice advice to Departments on the appropriateness of proposals for the regulatory reform procedure, before proposals are laid before Parliament.[8] The circumstance envisaged by the Minister is a different one, where the Parliamentary process is already well under way. While we will consider requests which we receive on their merits, we do not necessarily consider that it will always be appropriate to issue advice on proposed amendments to regulatory reform orders between the first and second stages of formal scrutiny. Where we decide it is appropriate to give without prejudice advice, our presumption will be that the process should be as transparent as possible.

Early sight of consultation responses

11. The 2001 Act requires departments to consult extensively on a proposal for a regulatory reform order before proceeding to lay the proposal before Parliament. Currently, we receive copies of the responses to the consultation document at the time at which the proposal is laid.

12. We are pleased to note that the Minister has now offered to ensure that departments pass responses to our committee staff as far as possible in advance of the date on which the proposal is scheduled to be laid. The extra time that this should provide in which to scrutinise the responses should prove valuable in ensuring efficient and effective scrutiny, particularly where a large number of responses were received to a particular consultation document.

13. The Cabinet Office has arranged for Committee staff to receive copies of responses to the consultation on the forthcoming Patents and Fire Safety regulatory reform orders. We appreciate the willingness to cooperate shown by the departments concerned.

2 Slow progress on regulatory reform orders

14. There has been a lengthy break in the progress of the Government's regulatory reform programme during the 2003 calendar year. Prior to the date of this report, only three proposals had been laid for first-stage scrutiny in 2003, on 13 January, 13 March and 14 October.[9] No draft order was laid for second-stage scrutiny between 20 April and 17 September.[10] In the 2002–03 year, only 17 items were laid under the 2001 Act: nine proposals and eight draft orders.[11] This means that regulatory reform items were laid in only about one of every three weeks in which the House sat. Twenty-three sitting weeks passed without the Government laying any regulatory reform items before the House.[12]

15. This break in the regulatory reform programme has serious implications for our own work programme, which is of necessity almost entirely dependent on the rate of progress of the Government's own programme. For the past six months or so, we have had little or no business before us. This has been frustrating, particularly given that, in May 2002, the Government estimated that "perhaps up to 40" regulatory reform orders would be due for completion in 2003.[13] Furthermore, if the Government is to meet its Public Service Agreement (PSA) targets, this "trough" in the regulatory reform programme will no doubt necessitate a forthcoming "peak" in the numbers of proposals due to be laid over the next two years. The Cabinet Office's PSA commits it to delivering over 60 regulatory reform orders by 2005:[14] to date, only 14 orders have been made.

16. In order to meet its PSA target of 60 regulatory reform orders, the Cabinet Office initially aimed to have made at least 40 orders by March 2004. It now appears that it is aiming to deliver only 26 orders by that date.[15] Consequently, if the Cabinet Office is to achieve its PSA target, a further 34 regulatory reform orders must be made in the 21 months between April 2004 and December 2005. The Minister told us that the Government remains committed to achieving this target, which he described as "stretching but achievable".[16] **We expect the Government to take care in assessing the achievability of its programme for delivery of regulatory reform orders, in light of the conventions that have developed which are intended to ensure a regular and even flow of regulatory**

9 The proposal for the Regulatory Reform (British Waterways Board) Order 2003 was laid on 13 January; the proposal for the Regulatory Reform (Gaming Machines) Order 2003 on 13 March, and the proposal for the Regulatory Reform (Sunday Trading) Order 2004 on 14 October.

10 The draft Regulatory Reform (British Waterways Board) Order 2003 was laid on 20 April; both the draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and the draft Regulatory Reform (Gaming Machines) Order 2003 were laid on 17 September.

11 These items are listed in Annex 1.

12 The House sat for 35 of those 52 weeks, not counting the recall of 24 September 2002. Regulatory reform items—that is, proposals and draft orders—were laid in 12 of those 35 weeks; in five of those weeks, two items were laid.

13 Second Special Report of Session 2001-02, *The Operation of the Regulatory Reform Act: Government Response to the Committee's First Special Report of Session 2001–02*, HC(2001-02)1029, para 2.12

14 Appendix 1, para 4.3, although it is unclear whether this target refers to the end of the 2004–05 financial year or the end of the 2005 calendar year. For the purposes of this report, we have assumed that it refers to the latter.

15 Appendix 1, Annexes A and E

16 Q1

reform items before this Committee. We would consider it most unfortunate if the target of 60 regulatory reform orders by 2005, combined with the hiatus of the past six months or so, were to result in an unreasonably high level of regulatory reform business coming before the House over the next two years. Such an increase could well result in regulatory reform orders receiving a less rigorous degree of parliamentary scrutiny than might otherwise be appropriate.

Reasons for lack of progress

17. We discussed with the Minister some possible reasons for lack of progress on the regulatory reform programme. There does not seem to us to be a drying up of ideas for potential regulatory reform orders. In February 2002, the Government outlined 63 proposals for regulatory reform orders in its Regulatory Reform Action Plan (RRAP). Of the 62 proposals remaining,[17] only 13 have been completed; of the remaining 49, 39 are currently at some stage of the regulatory reform procedure,[18] meaning that ten are, presumably, under initial development. The RRAP is due to be updated and re-issued in November 2003, and will presumably contain further new proposals for regulatory reform orders.

18. We consider that the Minister went part of the way towards explaining the Government's lack of progress when he observed that the operation of the Act:

> … places a greater and more burdensome responsibility on the department in question to get the policy-making right at the outset. Essentially we need to front-load the process of policy-making. That is a challenge for many departments more familiar with a means [that is, Bills] of being able to correct errors or deal with issues that had not been anticipated later on in the process … much of the work has to be taken forward in Government, notwithstanding the appropriate checks and scrutiny that this and the other Committee [the Lords Committee on Delegated Powers and Regulatory Reform] are able to provide.[19]

19. We agree that the requirements of the Regulatory Reform Act are such that departments would be well advised to allocate a significant amount of resource at the early stages of developing a regulatory reform proposal. The Act requires departments to issue a consultation document before proceeding to lay a proposal for a regulatory reform order before Parliament. In order to ensure that the consultation undertaken on a proposal is adequate, in terms of Standing Order No. 141(6), departments need to have a very clear idea of the changes they propose to make to the existing law. The proposed regulatory reform order therefore needs to be in an advanced state of development before consultation is embarked upon. This contrasts with the established process for generating traditional legislative proposals, where comments on policy can be invited when the policy is at a less advanced stage of development.

17 The RRAP listed 63 proposals for regulatory reform orders; since then, 16 new proposals have been added, one has been dropped and 16 have been taken forward by other means.

18 These 39 proposals are listed at Appendix 1, Annexes A and B.

19 Q 4

20. We accept also the Minister's observation that departments are still "on a learning curve" in using regulatory reform orders and that, consequently, principles and precedents are still in the process of being developed.[20] **We welcome the Minister's strong commitment to encouraging departments in the ongoing development of common principles to be applied to proposals for regulatory reform orders.**

21. **It seems clear to us that much of the potential of the regulatory reform procedure is yet to be exploited.** We are concerned by the comment in the Cabinet Office memorandum that regulatory reform orders "are usually not high profile reforms and work [on them] is sometimes done by less experienced officials."[21] If the Government is to achieve its target of delivering a further 46 regulatory reform orders by the end of 2005, departments must focus their efforts on recognising and meeting the particular requirements of the regulatory reform procedure. The RIU has a key role in play in assisting departments in this respect. In this context, we are pleased to hear that the Government's general guidance on the regulatory reform procedure has been updated and is shortly to be released.[22]

22. Equally, **departments must be prepared to recognise that regulatory reform orders propose reform to primary legislation and that, consequently, they require the attention of suitably experienced officials.** As the Minister himself acknowledged, it is important:

> … to make sure that in terms of legal and technical expertise within departments, within the Treasury Solicitor's Office and within the Parliamentary Counsel Office, where you have policy officials and ministers identifying that this is an area which is amenable to an regulatory reform order there do not turn out to be legal blockages just because [officials] are not familiar with the processes and procedures that need to be followed."[23]

The Government's future programme

23. At the time at which we heard from the Minister, the Government anticipated laying 12 new proposals for regulatory reform orders by the end of 2003.[24] It expected at least ten of these to be in force by April 2004. Two of the proposals (Fire Safety and Patents) are described in the memorandum as "quite complex" and "long".

24. At the time of this report to the House, only two of these 12 proposals had been laid.[25] Consultation on two of the proposals had not yet started.[26] Given that only eight sitting weeks remain in 2003, and that at least three of the proposals are too complex to be laid in

20 Q 5

21 Appendix 1, para 3.11

22 Appendix 1, para 2.3

23 Q 14

24 Details of these proposals are set out at Appendix 1, Annex E.

25 Proposal for the Regulatory Reform (Sunday Trading) Order 2004 and the proposal for the Regulatory Reform (NHS Charities Accounting) Order 2003

26 Proposals relating to Weights and Measures and Maritime Employment Disputes. Under Cabinet Office guidelines, the standard period for consultation is 12 weeks.

the same week as any other proposal, **we conclude that the Government's future programme for laying proposals for regulatory reform orders is already slipping. We draw this matter to the attention of the House.**

3 Managing the flow of regulatory reform orders

Background

25. Since the Regulatory Reform Act came into effect on 10 April 2001, we have been engaged in dialogue with the Government about how best to ensure a regular and even flow of proposals and draft orders before the Committee. If we are to be in a position to conduct efficient and effective scrutiny of regulatory reform orders on behalf of the House, it is vital to ensure an even flow of regulatory reform items. To this end, a convention has developed between the Committee and the Government whereby, as far as possible, no more than one proposal for a regulatory reform order or one draft order is laid before Parliament in any one sitting week.[27] This convention initially developed under the deregulation procedure set up by the Deregulation and Contracting Out Act 1994 and has continued under the Regulatory Reform Act.

26. In its memorandum of May 2002, the Government expressed concerns that the limitations imposed by this convention created "a real risk of logjams developing in the medium term".[28] The Government was prompted to raise concerns because, at the time, it anticipated that considerably more proposals for regulatory reform orders would come forward in 2003 than has in fact proven to be the case. We discussed the Government's concerns in our special report of October 2002, in which we emphasised that our principal interest was in encouraging full and proper use of the regulatory reform procedure, while ensuring that draft orders received the requisite degree of parliamentary scrutiny. To this end, we stated that, provided the Government ensured that there was a regular and even flow of regulatory reform items coming before us:

> … we should have no difficulty in dealing with up to two items laid in any sitting week, provided that at least one of those is a draft order, at "second-stage" scrutiny. We also suggest that it may, alternatively, be possible for us to deal with the laying before Parliament of up to two of the less complex proposals at "first-stage" scrutiny.[29]

27. Prior to our October 2002 report, we had in fact already demonstrated our willingness to assist the Government in progressing its regulatory reform programme by accepting four proposals for scrutiny in the fortnight before the 2002 summer adjournment, one of

27 For a more detailed history of this convention, see: Deregulation Committee, Fourth Report of Session 2000–01, *The Final Deregulation Proposals*, HC (2000-01) 450, para 2; Deregulation and Regulatory Reform Committee, First Special Report of Session 2001–02, *Further Report on the Handling of Regulatory Reform Orders*, HC(2001-02)389, paras 6–10; Regulatory Reform Committee, HC (2001–02) 1272, paras 9–14.

28 Regulatory Reform Committee, HC (2001-02) 1029, para 2.13

29 HC (2001–02) 1272, para 12

which was the longest and most complex proposal we have yet examined.[30] In addition, between July 2002 and July 2003 we have on three occasions accepted two items for laying in a single week; on two of these occasions, one of the items was a proposal for "first-stage" scrutiny.

Cabinet Office memorandum

28. The Government has responded to our October 2002 comments by stating that "it welcomes the Committee's confirmation that it has no problem in dealing with up to two items laid in any sitting week",[31] although it has also acknowledged that "concerns about whether high numbers of regulatory reform orders would stretch the capacity of the Committees [have] not been fulfilled".[32]

29. **We are pleased that the Government appears to have accepted our suggested arrangements.** In particular, we welcome the Minister's recognition that the Government has "everything to gain from making sure that the Committee is able to discharge its functions at the same time as we are pushing departments to try to drive forward a more steady flow of RROs than has been emerging."[33]

30. However, we are concerned that the Government's memorandum repeats our confirmation in slightly looser terms than those in which we initially phrased it: we in fact stated that we should have no difficulty in dealing with up to two items laid in any sitting week *provided that* at least one of those was a draft order, at second-stage scrutiny (or that both items were "less complex" proposals for first-stage scrutiny). The memorandum also goes on to suggest that, but for the developments set out in our October 2002 report, the Government would have been prevented from progressing more than 18 proposals in the 2003–04 Session.[34] We do not consider the Government to be justified in drawing this conclusion, given that we have always sought to make clear that our principal concern is to ensure efficient and effective scrutiny, rather than to hinder the progress of the Government's regulatory reform programme. If it transpired that our capacity to consider regulatory reform items was creating real difficulties for the Government in taking regulatory reform business through Parliament, we would be happy take a constructive approach and discuss these difficulties with the Minister. Our impression is that we are some way away from this situation.

31. In the interests of clarity, we once again summarise our position on the timetabling of regulatory reform orders:[35]

- In order to ensure efficient and effective scrutiny, we consider that the Government should endeavour to ensure that there is a regular and even flow of proposals and draft orders coming before Parliament

30 Proposal for the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

31 Appendix 1, para 2.10

32 *Ibid.*

33 Q 23

34 Appendix 1, para 2.10

35 See above, n 27

- As far as possible, the Government should aim towards the objective that no more than one proposal for a regulatory reform order or one draft order will in normal circumstances be laid before Parliament in any one sitting week.

- Where this proves impossible, we are prepared for the Government to lay two items in any sitting week, provided that either at least one of those items is a draft order, at "second-stage" scrutiny. We are also prepared to consider the possibility of the Government laying two, less complex, proposals for "first-stage" scrutiny.

- Should the flow of regulatory reform orders increase to such an extent that these arrangements constitute a restriction on the Government's ability to progress its regulatory reform programme, it would then be for us and the House to consider how to proceed.

If these arrangements were to constitute a genuine restriction on the Government's ability to take its regulatory reform programme forward, we would expect the Minister to approach us at an early stage.

4 Identifying future regulatory reform orders

32. We discussed with the Minister a number of ideas and initiatives for identifying areas of reform that could constitute future regulatory reform orders. Some of these ideas and initiatives are examined in greater detail below.

Raising awareness of Regulatory Reform Act within Government departments

Progress to date

33. The Minister was at pains to emphasise to us the importance that the Government places on departments using the regulatory reform procedure, as one means of progressing the Government's wider better regulation agenda: he told us that, since his appointment, "the Prime Minister has already made clear to me … the importance he attaches to this area of work."[36] As evidence of the degree of priority that the Government is seeking to give to the regulatory reform agenda, the Minister told us that, for the first time this year, departments are being asked to include information in their annual reports about their performance on regulatory reform matters.[37] In addition, the Cabinet Office wrote to departments shortly before we took oral evidence from the Minister, asking them to update their entries in the RRAP and identify new proposals to be taken forward by way of regulatory reform order, amongst other means.[38]

34. The Cabinet Office is intending to issue guidance for departments seeking to make use of the regulatory reform procedure. These publications are:

- a general guidance manual, updated to reflect experience to date in using the Act[39]
- guidance on drafting explanatory statements, including a new template[40]
- a guidance note on the meaning of "burden" in the context of the Regulatory Reform Act.[41]

Guidance notes on including regulation-making powers in regulatory reform orders and implementing EU directives in regulatory reform orders are planned for the future.[42]

36 Q 1

37 Q 1

38 Q 1

39 Appendix 1, para 2.3

40 Appendix 1, para 2.3; see paragraph 46 below for a more detailed discussion of this guidance.

41 Appendix 3: issued in July 2003 and now available on the Government's Knowledge Network (KN).

42 Appendix 1, para 3.10

Committee staff were consulted on the content of the general guidance manual and the note on the meaning of "burden". We expect the Cabinet Office to continue this practice in respect of the other forthcoming guidance described above.

Levels of awareness in departments

35. Despite the efforts of the Minister and his officials, it seems to us that the benefits of the regulatory reform procedure are yet to be widely understood across Whitehall. We note, for example, that many departments are yet to make use of the procedure. The Minister himself appeared to acknowledge that there is still much work to be done:

> … if I were to identify a challenge that we face it is that of culture change which requires a co-ordinated response in a number of different directions at official level and at ministerial level, and making sure that we embed within departments in Whitehall an understanding not just of the importance that we attach to this agenda but also a better understanding of the durability of the agenda and the confidence that this is the right vehicle to take forward this agenda.[43]

36. **We commend the Minister and his officials on the progress they have made to date in raising awareness of the regulatory reform procedure across Government, and we urge them to continue their efforts.** We look forward to seeing evidence of departments' increasing awareness of the benefits of the regulatory reform procedure in the updated RRAP, when it is re-issued in November 2003.

37. **We are particularly pleased to hear that a broad range of guidance for departments is planned.** As a step towards effecting the culture change to which the Minister referred, we suggested to the Minister that it might prove worthwhile to prepare a leaflet or something similar for Ministers, providing a "quick guide" to regulatory reform orders and setting out three or four examples of draft orders that have successfully passed through the parliamentary scrutiny procedure.[44] Cabinet Office officials told us that they are currently considering the utility of such a project: we commend the proposal to them, and would welcome the opportunity to comment on a future draft.

Identifying appropriate reforms in proposed Bills and Acts of Parliament

38. The RIU currently assesses departmental bids for proposed Bills in order to identify any proposed reforms that could instead be achieved by way of a regulatory reform order. The memorandum indicates that, in general, if a reform can be achieved by way of either primary legislation or the regulatory reform procedure, the Government's position is that the latter method is to be preferred.[45] The RIU also has a commitment to reviewing major

43 Q 32

44 Q 33

45 Appendix 1, para 3.4

items of legislation after they are enacted, in order to identify proposals for reducing regulatory burdens, including by way of regulatory reform order.[46]

39. **We commend the RIU for taking the initiative in assessing both Bill bids and enacted legislation.** We consider that this work should not prevent the RIU from continuing to focus its energies on raising awareness of the regulatory reform procedure across Government. Clearly, it is preferable that measures suitable for enactment by way of the regulatory reform procedure should be identified early in the policy-making process, rather than at the stage where they have already progressed to inclusion in Bill bids.

Seeking proposals for regulatory reform orders from Members of Parliament

40. In our October 2002 report, we urged other Members of Parliament to come forward with suggestions for potential regulatory reform orders:

> We would strongly encourage any of our colleagues who thinks that he or she has identified a reform which might be suitable for implementation by means of a regulatory reform order to act as the Government has suggested [in its May 2002 memorandum], in gathering the initial evidence and lobbying the responsible Minister for action. As the regulatory reform procedure becomes established, we look forward to seeing many more proposals generated, not only by the Government and Members of Parliament (including select committees) but also by those outside interest groups who so often criticise the effect of overly burdensome legislation.[47]

At the same time, we emphasised our belief that the primary responsibility for identifying potential regulatory reform orders must remain with the Government.[48]

41. The Government told us that no such proposals have been forthcoming from Members.[49] The Minister stated that the Government has "a number of different forums in which we ask not just individual MPs but actually a wide range of interest groups to participate in the [better regulation] agenda. I have been somewhat disappointed to discover the level of uptake."[50] The memorandum notes that the Government initially anticipated Members coming forward with proposals for how the law might be reformed. The Government now considers that it is better to expect Members to identify areas where Government intervention is creating unnecessary burdens, and for the Government to decide on the most appropriate means to remove the burdens.

42. From our own knowledge and experience as Members, we conclude that many of our colleagues remain unaware of the purpose of the regulatory reform procedure. Cabinet Office officials acknowledged in oral evidence that the Government has "… not found

46 Appendix 1, para 4.6

47 HC (2001–02) 1272, para 41

48 HC (2001–02) 1272, para 40

49 Appendix 1, para 5.4

50 Q 25

quite the right mechanism for spreading this message amongst MPs and making sure that they understand how they might engage on this."[51]

43. Despite the fact that work remains to be done in raising awareness amongst Members, we are disappointed that our colleagues appear not to have informed themselves of the opportunities offered by the regulatory reform procedure. The procedure gives Members the opportunity to put to the Government a proposal to reform a particular regulatory burden in primary legislation, where that reform would probably not otherwise merit a place in the Government's legislative programme. At present, Members have a range of methods at their disposal for raising awareness of a regulatory burden in legislation and pressing for action to remove it: presentation bills, Ten Minute Rule bills, early day motions and oral and written questions. If Members are serious in their wish to remove a regulatory burden, they ought to be aware that the regulatory reform procedure exists and press for the relevant Minister to use it. **We urge Members to consider making greater use of the potentially powerful tool for legislative reform created by the Regulatory Reform Act.**

44. We also draw to Members' attention the possibility that the Government could be asked to consider taking forward an unsuccessful proposal for a Private Members' Bill in the form of a regulatory reform order, where appropriate. The Cabinet Office has stated that it also examines bids for 'hand-out' bills[52] in order to identify clauses which might be delivered by regulatory reform order, and will then discuss with Departments whether the provisions might be delivered by regulatory reform order.[53] **We are pleased to note that systematic scrutiny of 'hand-out' bills for clauses which might be delivered by RRO is taking place. We nevertheless consider that Departments should be further encouraged to develop bids to reform regulation in legislation as RROs in the first instance.**

Including draft regulatory reform orders in Law Commission proposals

45. The Minister drew to our attention the work of the Law Commission, the statutory body charged with keeping the law under review and making recommendations for law reform, in promoting regulatory reform orders.[54] Where appropriate, the Commission is increasingly opting to include draft regulatory reform orders in its proposals for law reform, rather than draft Bills. According to the latest bulletin from the Commission, 29 Commission reports await implementation by the Government.[55] At least four of these are presently being taken forward, or are intended to be taken forward, by means of regulatory reform order.[56]

51 Q 27

52 'Hand-out' bills are bills drafted by the Government which are offered to Members successful in the ballot for Private Member's Bills.

53 Q 27 (Ms Jennings).

54 Qq 5 and 40

55 Law Commission, *Law under Review,* issue 60, 1 August 2003; this is available at www.lawcom.gov.uk.

56 Proposals relating to Execution of Deeds and Documents; Business Tenancies; Rules against Perpetuities and Excessive Accumulations; and Third Parties' Rights against Insurers.

46. **We are encouraged to hear of the Law Commission's work in promoting regulatory reform orders.** We expect the Government to acknowledge the Commission's initiative in this field by acting to implement more of the Commission's recommendations, an area in which it is generally acknowledged that the Government has lagged behind.

5 Quality of explanatory statements

47. During the 2002–03 Session, we have, on several occasions, had cause to express concern about the quality of explanatory statements prepared by departments. Departments seeking to implement a regulatory reform order are required by the Regulatory Reform Act to lay an explanatory statement at both parliamentary stages—alongside the proposal for a draft order and alongside the draft order itself. Our concerns have related to both "first-stage" and "second-stage" explanatory statements.

Explanatory statements accompanying proposals

48. Our concerns have arisen from the failure of explanatory statements to explain properly how the proposal would satisfy the grounds specified in section 6(2) of the Regulatory Reform Act (from which the criteria set out in the Committee's Standing Order are drawn).[57] Our key concern has been to emphasise that, in future, explanatory statements should address the question of how the proposal would satisfy the section 6(2) grounds with greater rigour.[58]

49. The Government memorandum responded to our concerns as follows:

> The Government will continue to update guidance, and offer training and advice to improve drafts, but the final responsibility for quality remains with individual departments … The Government also hopes that the Committee will remain flexible and helpful, for example in its approach to the use of evidence sessions to seek reassurance on areas not fully covered in documentation.[59]

50. During the 2000–01 and 2001–02 Sessions, we had cause to comment adversely on the quality of some draft orders (as distinct from the explanatory statements accompanying draft orders). We are pleased to be able to report that the quality of draft orders has subsequently improved, and that we have had little cause for adverse comment during the current session. The probable reason for this improvement is referred to in the Government memorandum, which notes that all draft orders are now checked by the Cabinet Office's legal advisers at the Treasury Solicitor's office before they go to Parliamentary Counsel to ensure "consistency of quality".[60]

57 Standing Order No. 141(6)

58 First Report of Session 2002–03, *Proposal for the Regulatory Reform (Credit Unions) Order 2002*, HC (2002-03) 82, para 19; Fifth Report of Session 2002–03, *Proposal for the Regulatory Reform (Housing Management Agreements) Order 2003*, HC (2002-03) 328, para 33; Seventh Report of Session 2002–03, *Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) Order 2003*, HC (2002-03) 436, para 15

59 Appendix 1, para 2.5

60 Appendix 1, para 2.3

51. We invited the Minister to comment on whether a similar process is employed, or could be employed, in respect of explanatory statements. The Minister's officials told us that, currently, all explanatory statements are looked at by staff in the RIU and by the responsible legal advisers at the Treasury Solicitor's office.[61] However, the Minister emphasised to us that, while he considers that the RIU has a very important continuing role to play in the regulatory reform procedure, responsibility for the quality of documentation must remain with individual departments.[62]

52. As noted in paragraph 34 above, some action is being taken in an attempt to provide a "benchmark" for explanatory statements: the Government is preparing new guidance for departments on drafting explanatory statements, including a template, which will draw attention to the grounds set out in section 6(2).[63] Cabinet Office officials told us that they hope to issue this guidance "just before or immediately after the [summer] recess".[64]

53. **We look forward to the forthcoming guidance to Departments on the drafting of explanatory statements, and expect it to provide a sufficient basis to enable departments to address the section 6(2) grounds with greater rigour. We would appreciate receiving a draft version of this guidance, before it is formally issued, and we would be happy to provide feedback on the draft document, should the Government consider that helpful.**

54. As regards the failure of some explanatory statements to address the section 6(2) grounds with sufficient rigour, it is not for us to determine the allocation of responsibilities as between the Cabinet Office and individual departments. However, we were somewhat surprised to hear that a similar centralised checking process is applied to both draft orders and explanatory statements, given the consistently good quality of the former as compared with the variable quality of the latter. **We suggest that the Government should examine the reasons for the discrepancy between the overall quality of draft orders and that of explanatory statements.**

Explanatory statements accompanying draft orders

55. We also take this opportunity to draw attention to our comments in a recent report we made to the House on a draft order. Our report on the Draft Regulatory Reform (Sugar Beet Research and Education) Order 2003 discussed the nature and extent of information and analysis that we expect to see in explanatory statements accompanying draft orders.[65] We were concerned that the explanatory statement accompanying the draft order, prepared by the Department for Environment, Food and Rural Affairs, did not specifically respond to certain findings we had made in our earlier report on the proposal for this particular draft order.[66] Although we were satisfied that the draft order should be approved,

61 Q 20

62 Qq 18, 19

63 Appendix 1, para 2.3

64 Q 19. The guidance is still to be issued.

65 Eleventh Report of Session 2002–03, *Draft Regulatory Reform (Sugar Beet Research and Education) Order 2003*, HC (2002-03) 591, paras 13–15

66 Thirteenth Report of Session 2001–02, *Proposal for the Regulatory Reform (Sugar Beet Research and Education) Order 2003*, HC (2001-02) 1247

we were not satisfied that the explanatory statement elucidated the object of the draft order in terms of section 1(1) of the Regulatory Reform Act. We therefore stated:

> We take this opportunity to indicate to government departments that we find it helpful if the explanatory statement accompanying the draft order positively demonstrates that the department concerned has considered the points raised in our earlier report, if any. In such cases, we would welcome the inclusion in the explanatory statement of some comment additional to a summary of the findings of our previous report.

56. We draw this report to the attention of all departments responsible for preparing regulatory reform orders.

6 Review of the Regulatory Reform Act

57. During the passage of the Regulatory Reform Bill through the House of Lords, the Government undertook to carry out a review of the operation of the Act and of any associated constitutional and procedural issues, three years after its enactment.[67] That report will fall due in April 2004. Mr Alexander told us that the Government intends to honour its commitment and will report to the House next April.

58. The Minister considers that "next April will probably be too soon to start a full review of the workings of the Act"[68] and that the scope of the upcoming review is therefore likely to be limited. The Government does not intend to carry out a comprehensive review of the Act's operation until "there is a sufficient body of evidence on the effectiveness of the Act".[69] The Government appears to have recognised that, at this stage, not enough use has been made of the Act to enable a meaningful review to be undertaken. Instead, the Government intends to direct its resources towards putting forward more regulatory reform proposals for parliamentary scrutiny: "the first priority is to demonstrate what the Act can do and then consider lessons learned from the initial programme of regulatory reform orders."[70] As the Minister put it to us, "we have everything to gain by putting a foot on the accelerator and driving forward our work in this area."[71]

59. We asked the Minister to comment on what he considered would constitute a "sufficient body of evidence" to enable the Act's operation to be usefully reviewed, and on when he anticipated that such a body of evidence would become available. In response, the Minister emphasised the importance that the Government places on the regulatory reform procedure. He did not specifically comment on what might constitute a sufficient body of evidence, nor on when he anticipated this might become available.

67 This undertaking was made by Lord Falconer: HL Deb, 13 February 2001, col 215.

68 Q 3

69 Appendix 1, para 5.2

70 Appendix 1, para 5.2

71 Q 6

60. We agree with the Government that, at this stage, insufficient use has been made of the 2001 Act to enable meaningful conclusions to be reached on the efficacy of the regulatory reform procedure. We support the Government's emphasis on "putting a foot on the accelerator" and urge it to focus on directing available resources towards progressing the regulatory reform programme. However, **we consider that, if the April 2004 report is not to represent the comprehensive review of the Act's operation originally promised by the Government, then the Government needs to give a further undertaking to the House about when the promised review will take place. We invite the Government to give such an undertaking in its response to this report.** Such an undertaking needs to address the question of what will constitute a sufficient body of evidence. Given the constitutional significance of the 2001 Act, it is important that any possible future amendments to it should arise as a consequence of discussion between Government and Parliament, not simply because Government has ceased to find the Act useful.

7 Conclusion

61. We welcome the Minister's recognition that proper scrutiny of regulatory reform orders is as much in the Government's interests as it is in Parliament's interests, and his expressed intention that the relationship between the Government and this Committee should be "consensual rather than confrontational".[72] We consider the working relationship that has developed to be both positive and productive. We look forward to continuing to develop the common interest of both Parliament and Government in ensuring efficient and effective scrutiny of regulatory reform orders. In particular, we look forward to the outcome of the limited review of the operation of the Act which the Government has undertaken to report to the House in April 2004.

62. We will wish to consider the outcome of that review in the context of our experience of the operation of the Act, and report our findings to the House in due course. We believe that at this stage it would also be helpful to seek the views of others on the operation of the Regulatory Reform Act. As a first step, we intend to invite the Chairman of the Better Regulation Task Force to give evidence to us at an appropriate point in the new Session.

72 Q 4

Annex

Regulatory reform items laid between 2 July 2002 and 1 July 2003	Date on which proposal laid	Date on which draft order laid
Removal of the 20 Member Limit in Partnerships Etc.	*Not laid between these dates*	24 October 2002
Sugar Beet Research and Education	16 July 2002	17 March 2003
Credit Unions	18 July 2002	16 December 2002
Business Tenancies	22 July 2002	*Not laid between these dates*
Special Occasions Licensing	24 July 2002	17 December 2002
Assured Periodic Tenancies (Rent Increases)	16 October 2002	13 January 2003
Housing Management Agreements	4 November 2002	24 February 2003
Schemes under Section 129 of the Housing Act 1988	10 December 2002	11 March 2003
British Waterways Board	13 January 2003	28 April 2003
Gaming Machines	13 March 2003	*Not laid between these dates*

Formal minutes

Tuesday 28 October 2003

Members present:
Mr Peter Pike, in the Chair

Mr Dai Havard	Mr Denis Murphy
Mr John MacDougall	Dr Doug Naysmith

The Committee deliberated.

Draft Report, [The operation of the Regulatory Reform Act 2001: a progress 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 62 read and agreed to.

Resolved, That the Report be the First Special Report of the Committee to the House.

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

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence be reported to the House.

[Adjourned till Tuesday 18th November at 9.30 a.m.

Witnesses

Tuesday 1 July 2003

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Mr Douglas Alexander MP, Minister for Regulatory Reform, Mr Simon Virley, Director, Regulatory Impact Unit, and **Ms Kate Jennings, Deputy Director, Regulatory Impact Unit,** Cabinet Office Ev 1

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Oral evidence

Taken before the Regulatory Reform Committee on Tuesday 1 July 2003

Members present:

Mr Peter Pike, in the Chair

Mr Russell Brown	Dr Doug Naysmith
Mr Dai Havard	Andrew Rosindell
Mr Andrew Love	Brian White

Witnesses: **Mr Douglas Alexander**, a Member of the House, Minister for Regulatory Reform, **Mr Simon Virley**, Director, **Ms Kate Jennings**, Head of Regulatory Reform Strategy Team, Regulatory Impact Unit, Cabinet Office, examined.

Q1 Chairman: Good morning, Minister. Welcome to the Committee. I believe you wanted to say a few words in opening before we move onto questions.

Mr Alexander: Thank you very much, Mr Chairman. Firstly, can I thank you for this opportunity to discuss with you issues arising from the second year's operation of the Regulatory Reform Act. As you will know, I personally am newly appointed to the role of Minister in the Cabinet Office with responsibility for this area of work. I have with me this morning Simon Virley, the Director of the Cabinet Office Regulatory Impact Unit and Kate Jennings, the Head of the Regulatory Reform Strategy Team in the Regulatory Impact Unit. With your permission I will be asking both my colleagues to contribute to our discussions this morning. Let me begin, if I may, by making it clear that I value highly the constructive and open approach the Committee has taken in commenting on the operation of the Regulatory Reform Act and I very much look forward to working with you closely as we take forward this agenda in the months to come. Today I would like to begin by saying a few words about the working of the Regulatory Reform Act so far and highlighting what I see as the key challenges both for the programme of Regulatory Reform Orders coming forward and the wider Better Regulation agenda. The Government views Regulatory Reform Orders as significant tools for promoting the Regulatory Reform agenda and overall we believe the Regulatory Reform Act is working well. RROs are a key part of the Government's Regulatory Reform Action Plan of measures to reduce burdens across all sectors of the economy. We have already delivered 14 Orders, all of which have fixed specific problems and reduced burdens. Some, including New Year licensing reforms and the removal of the 20 member limit on partnerships, have delivered substantial financial savings for business. As the memorandum highlights, these are RROs and other proposals coming forward have established important precedents and principles as to how the Act can be used in the future. Although overall the number of RROs delivered are less than had been anticipated, this perhaps reflects the ambitious and groundbreaking nature of the new Act. As the examples I have mentioned indicated, the Regulatory Reform Act has nevertheless begun to show its true potential and the Act is working well. We have made real progress this year with further progress still to be made. I would suggest that there a number of key challenges for the next year. The first large reforms—Fire, Patents and Civil Registration—will be laid this financial year. The Government will need to draw on the experience of these reforms and use these orders as precedents to help us identify further substantial new proposals. My officials will be working closely with Committee staff to ensure the efficient management of these Orders and I will also be seeking your help and support in delivering these important Reforms. Turning specifically to the number of RROs, let me say that we remain committed as a Government to delivering our PSA target of 60 RROs by 2005. This target is stretching but achievable. The Cabinet Office has recently written to departments to ask them to update their entries in the Regulatory Reform Action Plan and identify new proposals to be taken forward by RRO and other means. We will ensure that the Committee is kept informed of the results of this update, including the number, scope and timetable for new RRO proposals. I would like to stress that the overall emphasis should be on outcomes rather then merely on delivery. Incidentally, only one of the original RRO proposals has been dropped altogether; I recollect that was one in relation to driving licences. Other proposals have already been—or will be delivered—by the most appropriate means. I am aware that the Committee has shown some concern during the last year about the quality of draft RROs and their accompanying documents, and also about the flow of Orders coming through. Both of these issues are covered in the memorandum and I would be happy to return to these issues during questions. Of course RROs are just one part of the Government's Better Regulation agenda. This is clearly an agenda that has strong support from both the Prime Minister and the Chancellor and, indeed, the Prime Minister has already made clear to me since my appointment the importance he attaches to this area of work. We are actively promoting the Better Regulation agenda in a number of ways, including improving the quality of Regulatory Impact Assessments, including referring poor quality RIAs to the National Audit Office, pursuing alternatives to state regulation and promoting better regulation in

Europe. In the autumn we will be bringing forward an update of the Regulatory Reform Action Plan covering both existing proposals and new ideas for RROs and other deregulatory measures. Responsibility for implementation of reforms rests with the relevant policy departments so the issue of accountability is key. For the first time this year departments are being asked to report on their performance on Regulatory Reform in their departmental annual reports. I will now be working closely with Cabinet colleagues and Regulatory Reform ministers to help ensure that departments do in fact deliver on this agenda. Finally, I would like to thank Committee members for the cooperative and helpful way in which you have worked with us over the past year. RROs are a novel and groundbreaking tool for modernisation and deregulation. The process is a joint endeavour with procedure and practice developing as cases come forward. We appreciate the candour and rigour with which the Committee has reported on the various proposals to date and are particularly grateful for the arrangements for early without prejudice advice on aspects of proposals. Our ambition is to make full and effective use of the power and I believe this is an ambition that we share. I look forward to hearing your views at this evidence session and working together with you over the coming months.

Q2 Chairman: Thank you for that positive statement and for the comments you have made with regard to the work. As you rightly said, many of these issues are going to come up during the course of questions so we will move on to the questions now. You will be aware that I did ask a written question to the Prime Minister about which Cabinet Minister was responsible for Regulatory Reform and the Prime Minister indicated that that responsibility was now within your hands. The Deregulation procedure and now the Regulatory Reform procedure has always had a Cabinet minister take responsibility before. Can we take it, in view of what you have said in your statement, that the fact that it is not within the Cabinet—no disrespect obviously to you—the way the Government views the use of Regulatory Reform is in no way downrated.

Mr Alexander: I can give the Committee that absolute assurance. Clearly it goes without saying that the issues of Cabinet appointments are well above my pay grade in government and I shall leave that particular matter to the side. However, in terms of my own responsibilities within the Cabinet Office I would make a couple of points to the Committee. First of all, the Prime Minister could not have made it clearer to me personally, since my appointment as Minister for the Cabinet Office, the personal importance he attaches to the Better Regulation agenda. That is not just a statement of sentiment on his part, but he has made it clear that he looks forward to working with me to take forward this agenda with Regulatory Reform Ministers in the months to come. I think first of all there is very clear prime ministerial support for this agenda. Similarly I think the initiative that was announced by the Chancellor of the Exchequer in the last budget whereby five hundred measures had been identified from February 2002, if I recollect correctly, deregulatory measures across government—speaks to the fact that this is not solely a matter that is of concern to the Prime Minister, but is shared by the most senior members of the Government. In that regard I am absolutely confident that I do not just enjoy their support but will be able to advance this agenda from where I think is the appropriate location within government, which is the Cabinet Office.

Q3 Chairman: You state that the Government intends to undertake a formal review of the Regulatory Reform Act once there is a sufficient body of evidence on the effectiveness of the Act. What do you consider would constitute a sufficient body of evidence and when do you think that that body of evidence is likely to be available?

Mr Alexander: We plan to honour the Government's pre-standing commitment which is to present a report to the House on the operation of the order-making process and any associated issues in April 2004 which would mark the third anniversary of the passing of the Act's enactment. The terms of this commitment specifically noted that it would not be appropriate for this report in April 2004 to re-open matters of policy. The Government agrees that next April will probably be too soon to start a full review of the workings of the Act. Frankly I believe our immediate challenge between now and 2004 is to make full use of the powers that are available within the Act and on that basis accumulate evidence of how the Act is working. Candidly I feel it might be something of a distraction if, in the midst of our efforts to drive forward this agenda, we were simultaneously sending out a message that every part of the Act—or indeed any part of the Act—was being reviewed simultaneously. I think the challenge is to drive forward this agenda. As I say, the Government is convinced that this is an important Act and offers a significant tool in the Better Regulation agenda. On that basis I think a commitment I can give to the Committee is that the report that we offer to the House will be a review of the operation of the Act in April 2004, but thereafter if there is the need to look at more fundamental issues in terms of the workings of the Act we would then be at a stage consistent with what I have stated to be our continued goal of ensuring that the RROs are delivered consistent with our Public Service Agreement. That would be a point at which we could consider whether there is scope for a more fundamental review.

Q4 Mr Brown: Would you agree that the 60 day statutory deadline, provided for in the Regulatory Reform Act, represents the minimum period in which the Committee can reasonably scrutinise proposals? Would you also agree that the majority of the time taken to progress a policy through the RRO process is actually taken up with Government processes rather than Parliamentary processes?

Mr Alexander: First of all, I would like to pay tribute to the work of the Committee because I am aware that there was at least one occasion in the past year where I think it was 46 days that was taken rather than 60 days in order to assist us specifically in relation to an RRO operating with effect in local government and given the constraints of the financial year it had the effect of greatly assisting the work of the Office of the Deputy Prime Minister given the prevalence of understanding of the Committee. All of that said and notwithstanding our gratitude, of course we would want to ensure the maximum opportunity for the Committee to undertake what is its vital work in this regard. This perhaps offers an opportunity for me to place in context my thinking about the work of this Committee. What we are aiming to do through the Regulatory Reform Act is something pretty fundamental which is to leave behind in this area of our work what is a very well established pattern of passing legislation—even secondary legislation—within the Commons which involves a fairly confrontational approach across the floor of the House or indeed sometimes in Committee and also where, if it were to be the case that the Government had found there were areas of policy work that needed to take place it was possible for that to emerge during the process of the legislation being passed. I think the operation of the RRA places two requirements upon Government which is perhaps distinctive from a more traditional way of legislating. The first is that it places a greater and more burdensome responsibility on the department in question to get the policy making right at the outset. Essentially we need to front load the process of policy making. That is a challenge for many departments more familiar with a means of being able to correct errors or deal with issues that had not been anticipated later on in the process. First of all we have to front load the process within Government. I think that reflects your second point which is that much of the requirement for that work has to be taken forward in Government, notwithstanding the appropriate checks and scrutiny that this and the other Committee are able to provide. The second point that I would make is that not only does it require us to front load the process of policy development, but secondly the essence of the way that we work together on an agenda like this is consensual rather than confrontational. Actually, I would pay tribute again to the Committee and the collaborative way in which we have been able to work together, not least in relation to the without prejudice advice which has been offered by the Committee on specific matters over the last year. In that sense I am fully aware—not least from reading the evidence of my predecessor before this Committee almost exactly a year ago—that there had been some concerns expressed in this Committee and there had been some discussions in the media with regard to the appropriate balance between Government and the work of parliamentary committees in this area of work. All I can offer you is my view coming to this area of responsibility afresh within the last weeks. From speaking both to Simon and to Kate and to other members of the RIU staff they could not have been more fulsome in their praise for the work of the Committee, could not have been keener in their determination to ensure that that issue be fundamentally laid to rest in terms of whether there was an issue between Parliamentary time and Governmental time, and a genuine willingness to work together. I do not know whether Simon or Kate wish to add from an official point of view, but that is the message that I have received from officials and one that I have endorsed at ministerial level.

Mr Virley: I very much agree with the Minister's comments in all regards.

Q5 Mr Brown: One of the things that seems to be clear from some of the departmental submissions is that they do not view the RRO as something that would be legislation that was not in the Government's Queen's Speech but is additional to it. Now they view it as a quick fix to try to get something through Parliament quickly. Would you be prepared to remind departments of Lord McIntosh's statement during Second Reading that this powerful new tool for reforming primary legislation, rather than by means of secondary legislation, was warranted because the super-affirmative procedure proposed would provide a uniquely high level of Parliamentary scrutiny. It is not a quick fix, it is a different way of actually making legislation rather than the simple traditional Bill approach.

Mr Alexander: I think that point is very well taken and we are in constant touch and dialogue with departments in terms of the utility of RROs. I think the point you make specifically in terms of Parliamentary scrutiny—in the words of Lord McIntosh—is certainly true. Candidly my sense is that that is perhaps not the principal anxiety of departments in terms of using RROs as a potential tool in the Better Regulation agenda, rather I think it is partly inexperience and the extent to which we have been developing both principles and precedents as we have gone along over the last couple of years is genuine and real and departments have learned from that experience that everybody is on a learning curve together. The second point I would make is that I think there is additional scope for sending out messages to departments about thinking creatively about the potential use of RROs where otherwise they might not. For example, in discussions that are now taking place with the Law Commission I was heartened to see that they have recognised the potential scope for RROs as being a means by which their own proposals—in terms of Commission reports—could potentially be implemented where appropriate. I think also there is an extent to which—unlike the previous deregulation orders—the potential flexibility of RROs is a message that is still being understood fully within departments in the sense that it is a far more comprehensive means by which a whole area of policy can potentially be cleared away and clarity be given to what are remaining burdens. I think in that sense both the Patents and the Fire Safety RROs that are coming

through will again be a significant step on that learning process for departments because if you look, for example, at the Fire Safety RRO the number of pieces of legislation that that will do away with and bring a degree of clarity to the regime of fire safety in this country is very significant and will speak to the fact that large areas of policy are amenable to being dealt with by an RRO where there is proper Parliamentary scrutiny but also the means by which in policy terms we can get the right outcome for external stakeholders.

Q6 Brian White: I am glad to hear you say that because in paragraph 3.11 of the Cabinet Office memorandum there is a suggestion that the system is inflexible; in the review there is a disproportionate degree of scrutiny and inexperienced staff are doing the RROs. That raises a number of concerns. How are you addressing that?

Mr Alexander: Let me take those in turn. First of all the issue of proportionality. I was cautious in my remarks at the outset with regard to having a fundamental review of the operation of the Regulatory Reform Act at this juncture. I feel that we have everything to gain by putting a foot on the accelerator and driving forward our work in this area. Notwithstanding that, if I were to even suggest one area where I think there might be scope in the future for us to look at the issue of review, one might be whether the full process of scrutiny—which is available for very minor RROs—being identical to that for very major RROs like the Patent and Fire RROs that will be coming to you. That is one area which I think may merit consideration. All of that said, on the second point in terms of the calibre of personnel responsible, let me make a couple of specific points. First of all, again we are trying to undertake significant culture change within Whitehall departments. You made the point yourself when Lord Macdonald gave evidence on 2 July. We have decades of experience in Whitehall of legislating and drawing up regulation. The culture of Whitehall reflects that experience and that legacy. On the other hand, I think to try to push the Better Regulation agenda requires people to think in innovative and novel ways as I said in my introductory statement. One of the ways that legacy finds expression is in Bill teams. I have had some experience of Bill teams in the DTI and I think it is one of the things that the British Civil Service does outstandingly. Some of the Bill teams that I have worked with are amongst the best officials that I have seen. It is a good example of where some of the hierarchy—which sometimes bedevils the Civil Service with Whitehall—is completely stripped away and there is a task based approach. There is a team assembled specifically for the task of seeing through the Bill. That expertise and knowledge reflects the fact that over decades departments have gleaned the expertise as to how to put together a team of civil servants to work effectively on a Bill. We are at a much earlier stage with departments in terms of their understanding as to where the appropriate level of staff reside with the department to put together RROs. Again, I think that partly reflects some uncertainty within Whitehall departments as to the applicability of RROs. I feel, for example with Patents and Fire, a very strong lesson will be learned not just by those departments but by other departments across Whitehall that major areas of policy can be dealt with by RROs and therefore it is appropriate for the right level of staff to be committed. The final point I would make would be that I work closely with Sir Andrew Turnbull, the Cabinet Secretary, on this agenda. I want to make clear to the Committee that not only is this agenda taken very seriously at senior ministerial levels, but also Andrew, through his chairmanship of the Permanent Secretaries, as the Cabinet secretary he takes seriously this agenda. He is fully aware of the importance of ensuring that at official level there is a clear understanding as well as at ministerial level of the importance that the Prime Minister attaches to this work. In that sense I would not claim that every civil servant in Whitehall is fully aware of the operations of RROs, but there is an important learning process under way. We have messages flowing into the machine both from ministers and from senior officials across Whitehall.

Q7 Brian White: So the criticisms we made of the licensing proposals have been put through to other departments, have they?

Mr Virley: We have certainly been working with other departments in terms of the quality of drafting and we now have a dedicated resource in terms of the Treasury Solicitor's Office lawyer to help us and help work with departments to improve the quality of the drafts coming forward, and have been working with Parliamentary Counsel in terms of their resources to make sure that we programme the flow effectively.

Mr Alexander: Perhaps I could just add a point about Parliamentary Counsel. Although I did not hold responsibility for the Better Regulation brief within the Cabinet Office as Minister of State within the Cabinet Office last year, I was involved in the Comprehensive Spending Review negotiations that took place. I think it would be worth noting that one of the areas where there was significant investment was in the Office of Parliamentary Counsel. It did seem to me anomalous that notwithstanding the importance of proper legislation being passed and proper scrutiny taking place, we effectively had a bottleneck at the level of Parliamentary Counsel where, although they were outstandingly talented individuals, we did not have enough of them and that was potentially causing backlogs not just within the Better Regulation agenda but across a wider legislative agenda for Government. I am pleased in that sense that that found favour with the Treasury and there has been a significant commitment of resource to the Parliamentary Counsel Office. However, the caveat that I would need to add would be that given the expertise of Parliamentary Counsel, it will take time for that expertise to grow into capacity. One of the things we are doing is working closely with the Treasury Solicitor's lawyers attached to the Regulatory Impact Unit and also working directly with the in-house counsel of the departments in question to make sure that when

Regulatory Reform Orders come to Parliamentary Counsel they have actually been strengthened and improved from some of the experiences that may have happened in the past.

Q8 Brian White: So when are Parliamentary Counsel going to benefit from competition and market testing like the rest of the public sector?
Mr Alexander: That is an interesting question which I shall reflect upon. I would merely comment that some previous prime ministers from other administrations who were deeply committed to market contestability never managed to introduce it to the extent that she might have wanted within the legal profession.

Q9 Dr Naysmith: Some of this has been covered in your very comprehensive remarks, but the May 2002 Cabinet Office Memorandum clearly stated that the Government clearly considered their Regulatory Reform Act inappropriately burdensome. I quote from the memorandum, "It is our experience that some departments are put off using RROs because of the time-scales and bureaucracy involved". You have already touched on some of that, but can you give us some examples of past proposals which you consider could have been scrutinised under a more speedy procedure than we currently employ?
Mr Alexander: I will look to officials in terms of RROs that predated my arrival. The general point I would make by way of introduction is that having looked through all of the papers and preparing not least for this appearance before the Committee, I was struck by the fact that you can have fairly minor areas of policy—and indeed very major areas of policy—which at the moment are scrutinised in an identical fashion. On a common sense view there could be scope for looking at that very issue. If I were to anticipate one area where I think there is scope for consideration then it would be that. I am aware of the agreements that have been reached whereby, for example, RROs would not been brought forward which are both large and controversial. I am aware that it is vital, given our determination to ensure that this is a consensual process which involves a deeper degree of Parliamentary scrutiny in a different way from that which has been done historically, that we need to be sensitive to the need for full scrutiny of any proposals that are brought forward. On the other hand, one does have to recognise that there have been some RROs which have been very detailed and specific and others which are far larger. That seems to be something that may merit consideration in the future.

Q10 Dr Naysmith: It is amazing how something that seems very small when it is first produced for the Committee can sometimes, once we start asking questions about it, we discover there are all sorts of things that have not been considered in the consultation phase. That happens with some relatively minor matters. What I want to know is how you would intend to separate out, who would make the decision and what is a more complex piece of legislation compared with a simple one?
Ms Jennings: I think, as the Minister has indicated, it is too early to make that sort of decision. I would agree with you entirely that often consultation has thrown up issues which at the moment have not always been properly reflected in the explanatory documents. Certainly one of the things that we are doing when working with officials in departments is trying to make sure that they do, in their consultation documents, flesh out all the issues surrounding the proposal and then in the explanatory documents they reflect all the responses to that consultation. In particular we now emphasise the legal vires of the Act and the need to refer to things like proportionality and fair balance. I think it is right that in the first instance what we do is work with the current system so that departments get more used to the standard of documentation required and instead of seeing that as excessively burdensome actually recognise that it is a very necessary part of the process, as you say.
Mr Alexander: I suppose the assurance I would offer the Committee is that there is no hidden agenda with regard to the issue. I think we need to get the sequencing right whereby we drive forward the process of better regulation ensuring all the time that we, in Government, are working hard to communicate and remove whatever anxieties exist within departments in terms of the capacity of the Regulatory Reform Act to be used effectively. On the other hand we have to recognise that once we have a body of evidence—as the Chairman identified in his opening question—that would then be an appropriate point at which to look at how the process is working. It does not, in any way, bear on the quality of scrutiny that has been offered by this Committee—or indeed by any agenda within Government—but rather I think a very common-sense approach to say let us push this process forward, we have a clear target that we are working towards; in order to achieve that target, to take forward a better understanding within Whitehall of the applicability of RROs, but thereafter, when we have that body of evidence, let us look at what the experience together has been, both for this Committee and for Government, of the operation of the Act in practice.

Q11 Dr Naysmith: Can you not give any kind of first thoughts of what you are thinking of? There are obviously various layers in the process where the decision could be made about whether this is going to be a complex piece of legislation or a simple one. It could be at the consultation stage, or it could be us who make that decision whether we want to go through a full procedure or a shortened one. You are really saying you have not considered that?
Mr Alexander: I would be cautious of being drawn into making suggestions at this juncture. I feel personally that it would be appropriate for me to have had a longer experience in terms of the operation of RROs on my watch, effectively. Also because I think that shows the good faith in saying that this is something we need to talk about together over the years to come and in that sense if I was to suggest at this point, off the top of my head, a

particular point at which that judgment would be it would suggest a degree of planning and anticipation which simply is not there.

Q12 Dr Naysmith: I was seeking to get an assurance from you that it would be something that you would welcome our opinions as a Committee on and how it should be done.
Mr Alexander: Yes.

Q13 Dr Naysmith: The next question has also been touched upon, but it would be nice to have a strengthened view. How well do you think that ministerial colleagues and departments understand the scope of the power in the Act and understand what it can do and what it cannot do, specifically referring to the reducing of burdens which is basically what the Act is about?
Mr Alexander: In terms of the specific issue of burdens, of course there was a discrete issue in terms of some proposals from what was then LCD. I suppose I should say at the outset that when I identified principles and precedents emerging I am by training a Scottish lawyer so I am very comfortable with principles, but given that I am practising at Westminster I have to be familiar with common law precedents of English law. Both principles and precedents are emerging. In that sense, the sense of understanding is growing across the ministerial cadre. There are a couple of points I would make, though. First of all the Prime Minister is a fairly persuasive advocate to ministers of the importance of this agenda and in that sense the fact that he has already given a commitment that he wants to consult with me and have a meeting in months to come with ministers to push forward the Better Regulation agenda—of which RROs form a central part—I think will be an immediate and welcome opportunity to drive home that message with ministers. Secondly I would also identify the Regulatory Reform Ministers as being another key network in this area of work. Again, I have already been in touch with them and will meet with them shortly to emphasise the importance of RROs as a potential means of identifying this work. Again, in preparation for today's hearing, I spoke with official colleagues and with candour they identified that where there have been particular ministers—one they identified was Lord Falconer—who had a particular area of focus on this area of work, that had made a difference in terms of the implementation process from the point of view of officials within RIU. If I had to identify one minister who, in terms of the way within their departments officials have told me that they made a material difference to the drive forward on this agenda, Lord Falconer would probably be the person I would identify.
Mr Virley: That is right. Where we have Regulatory Reform Ministers pushing hard within the Department we have seen proposals coming forward and the message coming from the centre has been to spread that message across the other departments as well. I think we are getting there but it is a long process, as the Minister has indicated.

Q14 Dr Naysmith: As we have touched on already, it is quite clear that as we have seen orders coming through there has been a clear feeling of re-inventing the wheel and finding people who are discovering bits of the process that they had not known before they got to us. It reminds me a little bit of what happened with PFI which is controversial too.
Mr Alexander: I think you are right, but I also think that this is a challenge which we need to address from a number of different angles. First of all, we need to make sure that Regulatory Reform Ministers fully understand and share with ministerial colleagues within departments an understanding of this area of work and the importance that the Government corporately attaches to it. Secondly, we need to ensure that within departments the process whereby officials identify areas that are suitable for RRO actually functions and works well. That is why, as I say, the work that Andrew Turnbull is taking forward with the Permanent Secretaries is very important. Notwithstanding the excellence of my ministerial colleagues, it is unlikely that an individual minister, will, sitting in their office one day, think that we should suddenly look at the hundred-and-something pieces of legislation for fire safety and pull it together. It will be official advice that will come to the minister and then they need to offer leadership in driving it forward. In that sense, we need to get ministerial commitment to this agenda and I believe we are well on the way to doing that. At the same time, we need the official machine to be reflecting the importance that officials and ministers attach to it as well. In that sense, ministers have a role to play, but I would also argue that so do policy officials with departments. The third piece of that jigsaw is to make sure that in terms of legal and technical expertise within departments, within the Treasury Solicitor's Office and within the Parliamentary Counsel Office, where you have policy officials and ministers identifying that this is an area which is amenable to an RRO there do not turn out to be legal blockages just because they are not familiar with the processes and procedures that need to be followed.

Q15 Dr Naysmith: Do you think that "quick fixes" is a proper way to think about this sort of regulation, the idea that it is a "quick fix"?
Ms Jennings: I think we used "quick fix" in two different ways in the memorandum. One way is to say very much that they are not a quick fix, that they need thorough scrutiny and full consultation and that that is to be expected and is right and proper. The other way is to recognise that they are a means of bringing forward proposals that otherwise would not have found Parliamentary time. Therefore you can introduce reforms that would not have otherwise happened. In particular you can sometimes achieve what you might term a "quick fix" by meeting a specific financial year deadline or other deadline. I think it is in that sense that we see it as a quick fix, a way of achieving a reform by a specific deadline.

Mr Alexander: I think it partly depends on who you are talking to. I would never consciously suggest to this Committee that it was a quick fix in terms of Parliamentary scrutiny. On the other hand, were I talking to Regulatory Reform Ministers—trying to encourage them to use RROs if it was unlikely that they were able to secure legislative time, Legislative Programme Committee or, indeed, speaking to ministerial colleagues about the potential for RROs—that phrase might pass my lips.

Q16 Brian White: You talked about passing information through Whitehall to other departments. I understand that there is a guidance note on burden requirements coming from the RRO that is being drafted at the moment. How are you actually proposing to disseminate that through government departments and is there going to be a role for Parliament in that?
Mr Alexander: The guidance note has been cleared with law officers and the Committee's legal advisors as well and I am grateful for the work that has been provided by your own legal advisors in this regard. This will be issued to departmental lawyers before the recess. I can also tell the Committee that that will be done very quickly. Principally this bears on some of the issues that emerged from proposals with LCD clarifying various issues, particularly the definition of burdens, and where we are conscious that it has slowed down the process of reforms in the past, that legal definition of burdens, we wanted to ensure that it is effectively spreading best practice, that we dealt with that issue pro-actively and made sure that across Whitehall people were made fully aware of the issue. Basically it will be a process by which it is communicated to lawyers before recess.

Q17 Brian White: Will that include things like implementing EU directives and things like that, where appropriate?
Mr Alexander: Of course RROs are capable of being used in terms of implementing EU directives. I am conscious that there has been a concern expressed in this Committee previously about the gold plating of directives coming from the EU, but that again is an issue which has been addressed at official level ensuring that part of the message that is communicated from the RIU directly to departments is that there is scope for using RROs for implementing and transposing EU directives. On the other hand, it should categorically not been seen as an opportunity for gold plating.
Ms Jennings: On the specific issue of the guidance note that we will issue before recess, it will cover burdens but it will not cover EU directives at this stage. We hope to issue further guidance on that in the autumn.

Q18 Mr Havard: I want to go back to some of issues about explanatory statements and the way in which things are expressed not only to this Committee but to people outside who are consulted about the process. You know we have made comments in the past about the quality of several of them, both how it affects the Act—partial analysis—because people would not understand the effects of the proposal and so on. One of them in particular was time sensitive in a particular priority and had a political dimension to it. A number of things have been said both about the preparation of the consultation documents and the explanatory statements, but I would like to get to the business of how it is done. You talked about putting resources into team working, you have talked about cultural change, you have talked about ways in which better co-ordination is likely to take place, all of which are particularly welcome. I think there are some issues that you might want to address in relation to observance—or what I would call policing—and how that is maintained once the process is established. We were particularly concerned that with the explanatory statements, for example does the Regulatory Impact Unit—do the government departments as well as the Cabinet Office—actually scrutinise them in some fashion in a co-ordinated way in order to ensure both the rigour of the process and the quality of the explanation. I am particularly interested as well in what you say about the co-ordination processes and the maintenance processes that would be put in place if those changes are to be made.
Mr Alexander: Let me say a few points and then I will pass over to officials to discuss some of the details of how, from their point of view, the system works. First of all, there was perhaps a sense when the Regulatory Reform Act was introduced that the role of the Cabinet Office—and in particular the RIU in this area of work—would fade very quickly. I would respectfully suggest that actually the evidence that has emerged already suggests that there is a very important continuing role for the RIU in the Cabinet Office. Partly the general process of education across Whitehall is important, but some of the points that you have raised in your question I think also merit the continuing involvement of the RIU. A new model consultation document and forthcoming template for RRO explanatory documents produced within the Cabinet Office both emphasise the level of legal analysis that is required. Of course the Cabinet Office provides guidance and advice to individual departments. A number of training seminars provide detailed advice on how RROs can be used. That is offered both to dedicated legal advisors within individual departments and works closely with Parliamentary Counsel. Parliamentary Counsel have already been given additional resources. I do think, however, the point that you raise is also important in terms of what is the balance of responsibility between the Cabinet Office and individual departments. Again, I tread a fine line here because on one hand I have every interest in the process working effectively and I, as a departmental minister, hold responsibility for achievement of the PSA target. On the other hand, constitutionally the ultimate responsibility for the documentation that is produced from individual Whitehall departments rests with the Secretary of State of that department. In that sense I think it is to the credit of the RIU and the team working within the RIU that I sense there is a growing awareness within departments that we are not just people

enforcing or calling when problems emerge but actually are pro-actively seeking to help departments get up that learning curve. Historically the in-house legal services of departments have traditionally not drafted legislation themselves; that has been principally the task of Parliamentary Counsel. Given the fact that more of the emphasis consistent with this being a front-loaded process now rests with departmental lawyers rather than Parliamentary Counsel, I think that is an area which has merited both work over the last few months—and continuing work—to make sure that there is a process whereby the quality of legal work that is emerging in terms of draft legislation from individual departments is strong enough. The second, more general point that I would make is again about the front loading of policy work. It is easier for an official to draft an effective Green Paper—or even White Paper—than it is to produce comprehensive policy guidance on RROs in some ways, in that you can highlight difficult issues in a Green Paper or a White Paper but not necessary the answer and then say we are out for consultation on it. The process of the implementation of RROs requires the fact that not only furnishing this Committee but actually furnishing the general public with a clear understanding of what is anticipated through the RRO process demands a very high degree of rigour from officials in terms of what is actually their initial public offering, the consultation document that emerges. In that sense that is a process that we are very keen to emphasise to officials and drive through the seminars we are running and the work of the RIU to make clear to people that it is not akin to a White Paper or a Green Paper where it may be that you identify difficult issues, but there will be several occasions on which the clarity and rigour can be brought to the Government's view of this. It actually requires a very high degree of rigour very much at the outset.

Mr Virley: On the specific point you mentioned about our role in checking, yes we do check and Treasury Solicitors help us with the supporting documentation and the draft RROs that come forward from departments.

Q19 Mr Havard: You talk about coming up with the guidance and the template and so on, which is helpful. I am still not quite clear what you have said, whether there is then going to be a central authority that will act a bit like the Treasury Solicitors do in relation to a Bill process or whatever. I am also interested to know when all this guidance is coming out and how it is going to happen and whether or not, for example, this Committee is going to be involved in seeing drafts of it and perhaps helping to make comments about it. I get the sense from what you say that there are processes to make this incremental change. What I am concerned about is that we also have the immediate to deal with so we need some immediate change or step change in order to deal with the next Order that is coming here, as well as making this incremental change over time, over the next two or three years or whatever. Perhaps you would like to comment on those questions.

Mr Alexander: I will try to deal with the first and the last of your questions and then I will ask officials to comment on the detail of the second. In terms of a central authority, I think this is not an area or a question unique to either the RIU or the implementation of RROs. I think the Cabinet Office has a careful balance to strike between recognising that we have, as a Government, a shared interest in ensuring that the quality of documentation and legislation that is produced is of a high standard. It is entirely appropriate that we drive forward that process working collaboratively with departments. On the other hand, we should not denude departments of their principal responsibility for the quality of the documentation that it is producing. One of the phrases of the last six months has been "embedded journalists" and I think to have an embedded culture within departments where they take responsibility for ensuring the highest quality of documentation is actually what we are working towards. There is certainly a process of change under way, but deeply embedded within the culture of departments is a recognition that RROs are distinctive in their requirements and demands, but the responsibility for providing that quality is provided directly by departments. Let me ask officials to comment on the second part of your question and then I will come back.

Ms Jennings: On the question of guidance and Committee input to guidance, I think we have shared both the draft guidance on burdens and also the full updated guidance with Committee staff and asked them for their comments. The improvements on consultation documentation and template were issued just after Easter and hopefully we will begin to see the improvements coming through based on that. I think the improved guidance was very much based on comments from the Committees in response to the problems that you had found. We are working on improvements of explanatory documentation now and we would hope to issue it just before or immediately after the recess. I think that you are right to flag this as an issue, but we will continue to look at guidance and update it as appropriate.

Mr Alexander: In relation to your third point in terms of looking for a step change, probably no-one is more acutely aware of that than I am in terms of what is a stretching but achievable target in terms of the number of RROs we are working towards. That is why there is not a single silver bullet that addresses this challenge. We need an approach which draws in officials and, as I say, I am working with Andrew Turnbull and others to take that forward. We need an understanding at ministerial level and I am heartened by the explicit support of the Prime Minister for the agenda. I am also grateful for what has been a genuinely collaborative approach between not just members of this Committee but also the clerks of this Committee as we learn together—notwithstanding the fact that we are driving forward the agenda—issues that emerge both in terms of principles and precedents.

Q20 Mr Havard: As distinct from the draft order being scrutinised by lawyers are the explanatory statements going to have the same scrutiny by lawyers?
Ms Jennings: Yes, both the consultation documents and the explanatory documents are looked at both by our dedicated lawyer and by official staff in the unit.

Q21 Chairman: If there is new guidance would it be considered helpful to float that past this Committee before things are moved on just for us to look at it in an informal way?
Mr Alexander: I do not see that there is any difficulty with that except in terms of timing. What is the present timing in terms of the new guidance?
Ms Jennings: I think the new guidance has been with Committee staff and is nearly ready to issue but we can share it with the Committee.

Q22 Mr Brown: I want to look at what this Committee has dealt with in the recent past and look to the future. I do know this Committee did have concerns about the amount of work that was coming before us. Would you agree that it is helpful both to Government and to Parliamentary Scrutiny Committees to establish a steady regular flow of RROs rather than a pattern which has been described by some as "feast or famine"? Would you agree that the flow of RROs over the past year has been rather less than steady and regular?
Mr Alexander: Yes to both of your questions. If I recollect it was Mr Lazarowicz who was asking my predecessor Lord Macdonald almost a year ago whether he concurred with that view, and he did. Given the commitment that Lord Macdonald made to the Committee that this was an issue of concern, I took some trouble to go back and look at the flow that we have achieved. I understand that we had six Orders laid before the Easter recess but only one Order has been laid since. Indeed, after the summer up to twelve Orders may be laid before the Christmas recess. I think in terms of assisting the Committee in its work, of course we will endeavour to ensure that there is a steady flow. That being said, we rely on departments in terms of bringing forward that work. There has been one specific thing that I identified which was the work that we have been undertaking since last year to produce a forward look whereby there is clarity both for the Committee and within Government in terms of what is the likely work flow that is coming through. I am aware that there have been specific examples where the Committee has been asked to work to a much tighter timescale, in terms of compensation payments and local authorities and we are grateful for the forbearance of the Committee in that regard. Looking ahead I will of course endeavour to ensure that working with officials we try to make sure that the Committee is able to manage the workload, but I do not see this as being an issue either for the Committee or for Government. It is an on-going issue which we will continue to look at.

Q23 Mr Brown: Why do you think it has proved so difficult to establish a regular flow of work this year? Do you think that the problems lie in any particular area of Government? How far do the solutions to these problems lie within your control? Do delays in preparing and laying proposals suggest to you that RROs are not a priority for departmental resources or Ministerial action?
Mr Alexander: Taking the last point first, I would not accept that it is neither a Ministerial priority nor has adequate resources. As I said, the Prime Minister could not make clearer his own commitment to this area of policy work. I think, given the constraints and the legislative programme of the Government, even were it not the case that there was a strong focus at senior levels of the Government on this agenda—and indeed from officials—ministers would be inclined to look to RROs as a means of ensuring that policy changes can be achieved given what is necessarily a very packed legislative schedule. We work closely with departments to try to avoid the kind of bunching that you have described. There have been specific examples in the past, for example where there were, as I understand, financial consequentials in terms of the timing of the ODPM proposals and the operation of the financial year. That was a specific issue. We are also keen to ensure—for example for substantive proposals that are coming forward on Fire and Patents that given the very scale of what we are undertaking and the fact that in some ways these will be the first RROs that fully represent the scale of the potential of RROs in terms of taking a whole area of policy, bringing clarity, retaining necessary burdens but on the other hand removing a whole number of unnecessary burdens—that the Committee and others have time to ensure that they are able to go into it in sufficient detail. We have everything to gain by the Committee coming to recognise the good faith of the Government in saying certainly we want large proposals but we have already made clear we do not want large and controversial proposals taking this particular route. On the other hand, we have everything to gain from making sure that the Committee is able to discharge its functions at the same time as we are pushing departments to try to drive forward a more steady flow of RROs that have been emerging.
Ms Jennings: In terms of the delays in RROs coming forward and how this has impacted on the flow of orders, I think some of those delays will be avoided in the future by things like the fact that we are giving legal advice at a very early stage when proposals are identified and we now have the new guidance on things like the definition of burdens which means that lawyers will find it much easier to clarify exactly what can and cannot be done by RRO. I think it is also probably true that we will continue to have unexpected delays where consultation, for example, throws up issues which have not been anticipated and departments then have to go away and maybe do further research. Indeed, in terms of laying orders for second stage scrutiny sometimes suggestions from the Committee involve the departments then going away and doing further research and further

consultation. This can take time. This has been true with the two Orders that we hope will be possible to lay before the summer on gaming machines and business tenancies. The departments have been gathering further data and evidence to support the final stages of scrutiny.

Mr Alexander: The other point I would make in terms of the two major pieces of work that I identified on Patents and Fire is that we are already determined to work to ensure that the consultation materials are passed as early as possible to the clerks of the Committee to ensure, given the scale of the work underway, that the Committee is given every opportunity to gets its teeth into those particular proposals.

Q24 Mr Brown: You actually mentioned the intentions to lay a further 12 proposals for RROs before the end of the year. Three of these are quite complex. How confident can you be that all these proposals will be laid, given that consultations on four of them have not started as yet, and also keeping in mind that we only have 16 sitting weeks remaining before the end of the year?

Mr Alexander: That is certainly our intention. I suppose the general point I would make—and then I will ask my colleagues to speak about some of the details of the specific proposals because they have been involved in the preparation particularly of the Fire and Patents area—is that when I said in my introductory remarks that we wanted to focus on outcomes rather than delivery I tried to express what is a culture that we have developed within the RIU and are seeking to spread across Government. Notwithstanding the PSA target we have for 60 RROs—of which I am acutely aware and will continue to work hard to achieve—what actually matters out there in the business community and the voluntary sector and amongst the public is that we advance the Better Regulation agenda and in that sense I am sanguine if particular proposals when consultation takes place or when discussions take place with departments it emerges that rather than being amenable to the RRO there is another means by which the same objective can be achieved. There is work being taken forward in terms of alternatives to regulation at the moment and there are a number of different options within the Better Regulation toolkit which are available to Government. In that sense I have a very specific job in terms of making sure that we drive forward the PSA target, but on the other hand we should not lose sight of the fact that there will be occasions—for example the issue with the driving licences—where RROs turn out not to be the specific vehicle that can be used and there are other tools that can be used.

Q25 Dr Naysmith: Whilst we are on the subject of creating work for this Committee I was intrigued to see at the end of your memorandum—June 2003—the very last paragraph says "Ideas from MPs" and it mentions the fact that in the previous memorandum the Government invited MPs to identify proposals for reform by RRO. It goes on to say, "No such proposals have been forthcoming". I find that amazing and I wonder whether this proposal has not received any publicity other than being published in one of their memoranda which are not the most widely read documents.

Mr Alexander: I spoke to officials prior to this hearing today in relation to the involvement of the business community as well. There is a great deal of public discussion about the deregulation agenda and Better Regulation more generally. I believe that one of the challenges that we face in Government is to raise the quality of that debate so that we can have a serious conversation about what is a very serious issue. How do we achieve a regulatory environment in Britain that makes us competitive, that makes us easily stand in comparison with the best in the world as has recently emerged in both an OECD and an Economist Intelligence Unit Report, but on the other hand reflects the fact that as a civilised society we need appropriate regulations. For example, I would not suggest to this Committee or anywhere else that you should revoke the Minimum Wage Act and I think we need to get the quality of discussion about the Better Regulation agenda higher. One of the ways that I think we can do that is to ask people who make criticisms of the Government in terms of deregulation or the need for further deregulation to engage constructively in that dialogue. There are a number of forums which exist for that to happen. There is not just the Better Regulation Task Force working with David Arculus, there is also William Sargent's work with the Small Business Council (there is the Small Business Service which takes forward a lot of this work). We have a number of different forums in which we ask not just individual MPs but actually a wide range of interest groups to participate in this Agenda. I have been somewhat disappointed to discover the level of uptake. There are two ways to read that, one is—as you have suggested—we need to work harder at making sure that we make real that invitation by ensuring that people are fully aware of it. On the other hand, perhaps a more cynical view is that there are certain people who are keen to exploit for political advantage the suggestion that regulations be introduced, but when you ask them to engage constructively on a process of identifying what burdens and regulations could be removed they are less forthcoming. So I would reflect on the point you have made in terms of the involvement of MPs. Many of you know from your attendance at Cabinet Office questions, this is a regular issue which is raised on the floor of the House and in that sense it is not as if this is not an issue that is of concern to MPs; it clearly is. That being said, whether MPs carry around in their head the 120 or so pieces of legislation that relate to Fire Safety is another matter.

Q26 Dr Naysmith: It may be that some of them do not know about this procedure.

Mr Alexander: Yes, that is right.

Q27 Brian White: In conjunction with that, there are a lot of Ten Minute Rule Bills that come forward. How many of those are actually looked at

in terms of: is an RRO an appropriate way of dealing with the issue? All of us who have done Private Members' Bills know that if you come up in the ballot you get inundated with lobbying groups. Again, how much discussion has gone on with those lobbying groups who put forward a lot of ideas for Private Members' Bills, some of which may be appropriate for RROs? Has any thought at the White Paper stage been given as to whether RROs are appropriate?

Ms Jennings: Certainly in terms of both Bill bids coming forward for major legislation and hand-out Bills, we scrutinise those quite carefully to flag up any clauses within Bills or hand-out Bills which might be delivered by RRO and we then engage with departments to decide on the best way forward. We encourage departments to engage closely with their stakeholders on specific issues including when they are consulting on White Papers and also to consider Better Regulation for any policy proposals that they are putting forward. I think you may be right, we have maybe not found quite the right mechanisms for spreading the message amongst MPs and making sure that they understand how they might engage on this.

Mr Alexander: You are preaching to the converted with us three on this side of the table, but it may well be that we need to do more work with Parliamentary colleagues or across Whitehall to make sure that we continue to send out that message.

Q28 Chairman: I have been on the Deregulation Committee—as it was—since it was established, and now the Regulatory Reform Committee. On this issue of scheduling so that the Committee is able to ensure that it gives proper scrutiny, I have to say for the past few weeks that the Committee has been concerned because we have actually had nothing to do, and then we suddenly get spells when we go to the reverse with too much to do. Do you see any way of better scheduling of the way things are laid by your Department? You have indicated that a couple of the proposals you have coming are big and complex, would you accept that it is not unreasonable to say that if you do have that there should be a couple of weeks before laying anything else if this Committee is to get its teeth into the complex issues that you want us to look at?

Mr Alexander: I suppose my first observation would be that I see it as a sign of progress if we are moving towards a situation where there are concerns expressed by the Committee in terms of our capacity to get through together the workload that we face. I am keen to make sure that the Committee is well-provided with the time and scope necessary to scrutinise these measures properly. But on the other hand we need to make sure there is a constant flow coming through. I think this is a matter which would merit continued discussion between officials of the Committee and my own officials because we have no agenda other than to ensure that proper scrutiny takes place. The very foundation of the way we see RROs working is on a collaborative basis with an absolutely central role for this Committee in ensuring proper Parliamentary scrutiny takes place. On the other hand, the reality is—not least given my PSA commitment to try to work towards what is a very stretching target—I will continue to be driving departments and to push forward RRO proposals in the months to come by holding this brief. In that sense we need to make sure that there is the correct balance struck between making sure that there is a constant flow of RROs emerging from Government, ensuring that this Committee has adequate time to scrutinise the proposals as they emerge and, on the other hand, making sure that internally within Government that flow increases to allow us to come to a point where we can meet the PSA target.

Q29 Chairman: Both sides have the same aim, so we are really saying that if our officials indicate to your Department that we see a problem you would not be unsympathetic although, at the end of the day, both you and we would want to see more items going through the process.

Mr Alexander: Yes, of course.

Mr Virley: And I think that has already been the case. For example, back in March 2003 we had three proposals coming forward at the same time. I think consultation with yourselves led to the laying of one of them being delayed to make sure that we achieved a steady flow. I would imagine we would be able to do something similar in the future.

Q30 Chairman: The memorandum says in paragraph 4.3 that the Cabinet Office is encouraging departments to identify and deliver more reforms. What indications do you have that departments are responding to this approach, and is there a danger that if we become target-driven departments might come up with hastily prepared RROs or proposals which may make an inappropriate use of the procedure?

Mr Alexander: Let me try to set out for the Committee where I see we are in terms of future programmes. We have two proposals which are now awaiting final scrutiny which will be laid before the recess, that is Gaming Machines and Business Tenancies. We have already delivered 14 RROs. There are then a further seven proposals that have already finished their consultation periods and are due to be laid after the summer. As I mentioned, these include the two major reforms of Fire Safety and Patents. In the Cabinet Office working through the RIU we take a pro-active role in working with both the Legislative Planning Committee secretariat and departmental officials co-ordinating Bill bids to ensure that Parliamentary time is used to the best effect. We believe it will enable us to identify potential measures within Bill proposals that could then be delivered by RROs. So we have a number of feelers out simultaneously, be that in terms of what is emerging from White Papers, what is coming to LP, what else is happening in terms of hand-out Bills, constantly looking to try to grow the number of RROs that can be taken forward. As I say, we also are heartened by the fact that people like the Law Commission who have at times in the past expressed disappointment about the fact that major areas of reform they have identified in the reports have not

found slots in legislative programme are now increasingly looking to RROs as being a potential vehicle for taking forward their own reform agenda. In that sense I think there are grounds for optimism that while the target is stretching we still genuinely believe it to be achievable and are working with that in mind.

Q31 Chairman: Do you think enough has been done through bodies like chambers of commerce and trade federations to say that if business and industry sees unnecessary new regulation—and there is this argument of where regulation is needed and unnecessary—that if they feed them in this might be a way to tackle some of the points. If there really is a burden and the regulation is totally outdated do you think there could be more done to encourage bodies like that who might see the problems?
Mr Alexander: Again I think the key challenge is how, working with organisations such as chambers of commerce and the CBI, we can ensure that there is a constructive dialogue between the business community and Government. I personally felt some disappointment at some of the press coverage that took place around the last British Chambers of Commerce Conference given the lack of sophistication in some of the press commentary in relation to the Better Regulation agenda. In that sense I think that in Government we have a responsibility to engage in that dialogue and make sure that the business community is involved. Frankly, there is also a responsibility on the business community. If there is an earnest and genuine desire to work together—as I believe we are expressing from Government—to avoid the easy headline and to undertake the hard work of making sure we identify where those areas are. I think you could characterise the position as the Government is a willing partner in ensuring that we take forward this agenda not just on RROs but on better regulation more generally. The challenge also rests with the business community and there are occasions where organisations such as the CBI—there was a statement by Digby Jones last year where he stated that Britain was clearly ahead of European competitors in terms of an environment in which to start a business—and the business community has been clear, through its organisations, that we have made progress on this agenda. Other organisations, like the OECD in its two reports and the Economist Intelligence Unit have been very clear that Britain leads in Europe in much of this Better Regulation agenda but nonetheless we need to continue to work hard to make sure that the debate that takes place is not on the basis of misplaced statistics but actually a collaborative approach not just within Parliament but beyond Parliament to make sure we advance this agenda.

Q32 Dr Naysmith: We have talked a lot about the sort of things that are obstacles to the promotion of RROs in departments and so on. We have mentioned culture change and the way departments tend to focus on Bills because that is the way they have already done it. Presumably you would see that as the major obstacle, the culture. Then I was going to ask you if there are any departments—and I cannot really remember whether we have had anything from Education or Health—which seem to you to be reluctant to use this procedure even though we know there are things which could probably be reformed fairly quickly. One answer that immediately springs to mind in answer to my own question is that the departments I mentioned both had major Bills recently so they probably tacked everything onto those. Are there any obstacles which prevent departments from participating more fully?
Mr Alexander: I think there are instances where individual ministers have understood clearly the potential of this legislation. Simon mentioned Lord Falconer in terms of some of the work he was driving forward as Regulatory Reform Minister in a previous portfolio. Individual ministers can made a significant difference in the working of departments. On the basis of our experience to date I would be cautious of identifying particular departments in terms of the RROs that have been produced for exactly the point that you make, that there could be a number of factors, not least whether the department has secured legislative time in Government programme which would dictate whether RROs have been the chosen vehicle or not. To answer your substantive point, I think probably if I were to identify a challenge that we face it is that of culture change which requires a co-ordinated response in a number of different directions at official level and at ministerial level, and making sure that we embed within departments in Whitehall an understanding not just of the importance that we attach to this agenda but also a better understanding of the durability of the agenda and the confidence that this is the right vehicle to take forward this agenda.

Q33 Dr Naysmith: Would it be worthwhile preparing a leaflet or something for Ministers with some kind of information giving examples of three or four really successful things that have gone through this Committee. I really do not believe that every single minister that I know understands Regulatory Reform and it sounds like a fairly simple thing to do to try to make sure they are on board.
Mr Virley: We have exactly that in mind, actually, to produce a quick guide to RROs.

Q34 Brian White: One of the things that comes through in Regulatory Reform is an emphasis which is still not strong enough on being able to understand what the legislation actually means; being written in plain English or in simpler English than sometimes is the case, whilst being consistent with being legally correct. How much emphasis is actually being put on that in the guidance going to departments, given that it is a requirement of this Committee to look at plain English?
Mr Alexander: That is a very important question. I suppose I should declare a vested interest having been a lawyer before becoming a Government minister. There is a balance that needs to be struck between the determination to make sure that the

consultation document is real and that people are able to understand what it is talking about, whilst on the other hand—Kate mentioned the involvement of lawyers even in terms of the consultation document—ensuring that adequate degree of rigour that early in the process. If ever you want rigour then speak to a lawyer, but if ever you want clarity a lawyer is probably not the first person you should call on. In that sense I would not say that we always get it right, but it is an important balance to try to strike because on the one hand both in the consultation and then in legislation—be it primary or secondary legislation that is drafted—the outcome of the legislation often turns on the statutory interpretation of individual words. In that sense what may appear clumsy statutory constructions are necessary in order to ensure that the will of Parliament is given proper expression on the legislation. I say that with humility; I am sure that we endeavour to get it right all the time but I am sure we do not always get it right in terms of understandability but nonetheless it is an issue that we are constantly aware of and seek to get that balance right between the rigour early in the process—particularly for RROs—with a need for understandability from the general public.

Q35 Chairman: Are you able to give any examples of an RRO proposal that has been stripped out of a Bill that is in preparation?

Ms Jennings: I think the obvious examples of that are the local government proposals, the three end of financial year ones on cash incentive schemes and housing where all three came out of the Local Government Bill and basically failed to find space in the Bill. In addition the Welsh Ombudsman proposal which should be laid before the Committee before the end of the year, the initial intention was for that to be in the Local Government Bill but there was not time for it.

Q36 Chairman: Are there any other points you wish to make before you go? Can I just indicate that there will be one or two items we will be writing to you about because they are more appropriate dealt with in a written format than taken as oral issues today.
Mr Alexander: I look forward to seeing that correspondence. I would just emphasise the point that I stated at the outset which is that I am clearly new to this brief. It is an area which I am both excited and challenged to be asked to take forward on behalf of the Prime Minister, but it is one which I will look forward to working with the Committee on in the year ahead because I believe it is one in which—as one of your Committee members said—we have everything to gain by working collaboratively and I think it provides us with an ideal opportunity to drive forward this agenda.

Q37 Chairman: Thank you for coming along. It has been a useful session for us and I hope it has been useful to you, Minister, and to your officials.
Mr Alexander: It has indeed, thank you.

APPENDIX 1

Government Memorandum on Regulatory Reform Order-making

1 Introduction

1.1 This memorandum sets out the Government's views on the second year's operation of the Regulatory Reform Act 2001 (RRA) and responds to the Commons Committee request that the memorandum should address the following questions:

- Are there any outstanding issues about the operation of the regulatory reform process that continue to be of concern to the Government? In the Government's view, have any new issues about the operation of the process arisen since the publication in October 2002 of the Committee's Third Special Report of Session 2001–02[1]?
- Does the Government consider that the Regulatory Reform Act is functioning in any respect other than the way in which Parliament intended?
- What is the likely flow of regulatory reform orders in the coming year? How many proposals are likely to be laid, and how complex are these proposals likely to be?

2 Outstanding/New Issues

Quality of drafting

2.1 The Government understands the importance of the careful and precise drafting of proposals and draft Regulatory Reform Orders (RROs). The drafting quality of Explanatory Documents and consultation documents have been one of the main concerns of the Committee in this period.

[1] HC 1272 http://www.publications.parliament.uk/pa/cm200102/cmselect/cmdereg/1272/127202.htm.

2.2 Criticisms from the Committee have included:

— The quality of legal analysis against Section 1(1)(b) of the RRA.

— Adequate analysis of responses to consultation.

— Controversy surrounding proposals but not central to reforms (see para 2.4 below).

2.3 Departments are responsible for the quality of their RROs and accompanying documents. The Government has introduced a number of improvements to both the process and guidance with the aim of raising quality:

— All **draft RROs** are now checked by the Cabinet Office legal advisors at Treasury Solicitor's office before they go to Parliamentary Counsel to ensure consistency of quality.

— The **model consultation document** followed by Departments has been revised to separate out the policy explanation from the legal analysis. The requirement to analyse proposals against section 6(2) of the RRA has been made more explicit, and it is emphasised that department lawyers should be closely involved in drafting this section of consultation documents.

— The Government is preparing a new template and guidance on drafting **Explanatory Documents** for Departments. This guidance will draw attention to the list of issues to be addressed in Explanatory Documents under 6(2) of the Act, and the link between this and House of Commons Standing Order 141.

— General RRO guidance has been updated to reflect the experience of using the Act so far. The Commons Committee staff were consulted on this update.

2.4 The Committee raised the issues of controversy and adequate response to consultation in its reports on the British Waterways Board[2] proposal and the Housing Management[3] proposal. The use of private finance in both Water Grid Public and Private Partnership Project (PPP) and the local authority housing Private Finance Initiative (PFI) was controversial, but evidence sessions suggested that the RRO proposals, which enabled these projects to take place, were not controversial in themselves. In future, the Government has asked Departments to anticipate and comment on any areas of potential controversy in their consultation and Explanatory Documents, and to demonstrate explicitly why they think these issues should not affect the use of the RRA to implement proposed reforms.

2.5 The Government will continue to update guidance, and offer training and advice to improve drafts, but the final responsibility for quality remains with individual Departments. It is perhaps inevitable with a new process that some procedures need to be refined further. The Government believes that it is important that the Committee should continue to carry out its scrutiny role to the same exacting standards. The Government also hopes that the Committee will remain flexible and helpful, for example in its approach to the use of evidence sessions to seek reassurance on areas not fully covered in documentation.

Presentations and evidence sessions

2.6 Lord Macdonald wrote to the Committee on 14 October 2002, accepting its recommendation that departmental officials should give presentations to the Committee immediately after the laying of proposals for initial scrutiny. This has proved to be a useful forum for the Committee members to raise preliminary questions and for Departments to explain the background to proposals. Since this date, five presentations have taken place.

2.7 This year three evidence sessions have been called. Sessions on the British Waterways and Housing Management proposals were used, amongst other things, to address the issue of controversy highlighted in paragraph 2.4 above.

Without prejudice advice

2.8 The Government welcomes the Committees' approach to offering advice as to the suitability of a proposal for the RRO process before it is fully worked up into an RRO. In the past year, this process has been used to seek preliminary views as to the suitability of proposal to remove a restriction on the Welsh Ombudsman from undertaking investigations as a Local Commissioner of the Commission for Local Administration in Wales. The Committee provided advice on this proposal in their letter of 18 March 2003 to Peter Hain. The Department is due to consult on this proposal shortly.

2.9 On this occasion the Lords Committee chose not to give detailed advice. The Government accepts that the decision whether to give advice remains with the Committees and recognises that such requests for advice should clearly highlight the specific technical point at issue, and cannot be used as a means of anticipating views on the policy itself.

[2] HC 521 http://www.publications.parliament.uk/pa/cm200203/cmselect/cmdereg/521/52102.htm/

[3] HC 520 http://www.publications.parliament.uk/pa/cm200203/cmselect/cmdereg/520/52002.htm.

Timetabling

2.10 Concerns about whether high numbers of RROs would stretch the capacity of the Committees have not been fulfilled. Nevertheless, the Government welcomes the Committee's confirmation[4] that it has no problem in dealing with up to two items laid in any sitting week. This has already been the case on four occasions this year. The Government notes that there may be over 18 proposals laid in the year 2003–04. This would have been full capacity if the numbers had remained limited to one per week. (A list of forthcoming proposals is at Annex E.)

2.11 The Government is aware of the need for adequate planning, and continues to issue monthly work plans identifying forthcoming proposals. There is a tendency for bunching of RROs after the summer recess, as proposals are finalised over summer and have to wait to be laid. The Cabinet Office works closely with Departments to avoid this bunching, but it is not always possible. The Government will continue to liaise with the Committees to plan the laying of proposals. When it is necessary for two proposals to be laid in one week, either one of these will be for "second-stage" scrutiny, or, if both proposals are for "first-stage" scrutiny, the Government will ensure that these are less complex proposals. No proposal will be laid for scrutiny without the prior consent of both Committee Clerks.

Adverse reports

2.12 The Government was grateful for the Committee's confirmation in their Third Special Report[5] of the position on re-laying orders should the Committee recommend amendments to a particular draft order under "second-stage" scrutiny. Although such a situation has not arisen this year, it is only right for the correct procedure to be clear.

2.13 In practice, communications between the Committees and Departments has enabled any policy concerns to be resolved before the report stage. Where communications on the Business Tenancies RRO proposal failed to answer the concerns of the Lords Delegated Powers and Regulatory Reform Committee, the Lords Committee has sought further informal consultation and research, thereby giving the Department every opportunity to answer these concerns before resorting to an adverse report. The Government very much welcomes this approach. It is right that adverse reports should be reserved for situations where the Committees are clear that they cannot accept specific aspects of the policy put forward in the draft RRO. The Government is happy to reiterate its commitment not to proceed with a draft order in the event of an adverse report.

Disagreement

2.14 The Government appreciates the Committee's disappointment over the rejection of its recommendation for a free vote under Standing Order No 18(2) in the event that the Government disagrees with a Committee's final report.[6] However the Government's position on this remains unchanged. It remains the Government's intention to do everything possible to avoid such disagreements. In the unlikely event that this does not prove possible, the Government would call a whipped vote.

Devolution

2.15 The Government is pleased that in the past year, the initial delays in gaining consent from the National Assembly for Wales have been avoided. Cabinet Office guidance reminds Departments of the need to seek consent from the National Assembly for Wales where necessary, and, to maintain flexibility, confirms that this can be sought either before or after the final scrutiny stage. Departments are made aware that they may need to return to the Assembly for further consent, should the draft order have changed since original consent was given. Likewise, should the Assembly demand changes to a draft order following "second-stage" scrutiny, then the order would have to be relaid for scrutiny with the two Parliamentary Committees.

2.16 The guidance advises Departments to state in their Explanatory Documents whether formal consent is needed and their plans to gain this consent. Explanatory Documents should also make clear where the draft Order would apply differently in Wales to England. Once consent is given the Departments are required to provide details.

[4] Third Special Report, HC 1272—para. 12.
[5] paras 16–21.
[6] HC 1272, para 26.

3 Functioning of the Regulatory Reform Act

3.1 Although overall the number of RROs coming forward remains lower than anticipated, the RRA has successfully delivered 13 RROs to date. A full list is included at Annex A. These include the New Year licensing reforms[7] and the removal of the 20 member limit on Partnerships,[8] both of which have delivered substantial financial savings. All of these RROs have reduced burdens in the way intended by the Act.

3.2 Both these initial reforms and forthcoming proposals have enabled us to identify specific ways in which the RRA can be used to deliver reforms:

In parallel to Bills: Effective use of Parliamentary time

Limited Parliamentary time and strict guidelines on clause numbers mean that proposals often fail to get into a Bill. RROs offer an alternative route and help with Bill management. For example:

- Fire Bill proposals will modernise the Fire Service; the Fire RRO, to be laid this autumn, will simplify and modernise the Fire Safety regime.
- The Gaming Machines RRO proposal will modernise payment methods and deliver reforms which will save the industry £1.85 million a year from this autumn, earlier than waiting for Gambling Bill proposals would allow.
- The proposed Patents RRO will deliver significant beneficial procedural reforms, whilst more controversial reforms will have to wait for a Bill slot.
- Four relatively small Local Government RROs (three of which have already been delivered[9]) failed to find space in the Local Government Bill.

"Quick fixes"

RROs can offer a route for delivering reforms to specific deadlines. For example:

- Licensing reforms met New Year's Eve deadlines.
- The three Local Government RROs highlighted above were all delivered in eight months from consultation in order to meet new financial year deadlines, and faster than the Local Government Bill would have allowed.

Themed

The proposed Local Government Consent regimes RRO is the first themed RRO. It will remove 47 consent regimes from Local Authorities across a range of policy subjects.

Specific Problems

Smaller RRO proposals often remove a single specific problem:

- New Year's Eve licensing RRO.
- Sunday Trading RRO proposals will remove a requirement on large shops to notify Local Authorities of their Sunday opening hours, and for Local Authorities to register these details.

Transposing EU Directives

Using an RRO instead of 2.2 regulations to transpose Directives is not as simple as 2.2 regulations, but it does enable the reform of the primary legislative regimes already in place. This way, new requirements do not just lie on top of the existing laws but instead are integrated into a new and appropriate legislative structure:

- The Fire RRO will establish the principle of using an RRO to implement Directives.
- It is too late to use an RRO to implement the most recent Equality Directives but the Government will be researching whether RROs might be used to simplify the complex and overlapping legislation in this area.

[7] SI 2002/3205. http://www.legislation.hmso.gov.uk/si/si2002/20023205.htm.

[8] SI 2002/3203. http://www.hmso.gov.uk/si/si2002/20023203.htm.

[9] The Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 (SI 2003/259) The Regulatory Reform (Housing Management Agreements) Order 2003 (S.I. 2003/940), The Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003 (S.I. 2003/986).

Simplification and modernisation of whole regimes

The ability to tidy up and modernise overlapping and out of date legislation was one of the key aims of the RRA. Introducing new risk based systems and reflecting new technology may be part of this modernisation process. The Fire RRO to be laid this autumn will be the first Order of this type. Others include:

— Taxi RRO proposals, and
— Road Reform RRO proposals.

Broadening Powers

RROs can be used to broaden the powers of an individual or an organisation. For example:

— British Waterways RRO.
— Welsh Ombudsman RRO, and
— Museum of London RRO proposals.

Removing restrictions and requirements

In addition to removing requirements, such as consent regimes, RROs can also be used to simplify and streamline requirements. For example:

— Partnerships: abolition of the 20 partner limit.
— Sunday Trading notification requirements.
— Local Government consents regime RRO, and
— Offshore wind farm proposals.

There is also no reason in principle why an RRO could not be used to set up a new agency to over see a simplified regime.

De-criminalising

The Maritime Employment Disputes RRO and Road Reform RRO proposals will both de-criminalise offences.

Adding New Legal Burdens

RROs must remove or reduce burdens, but they can also add new, usually better targeted burdens:

— The Business Tenancies RRO aims to remove the requirement to apply to court and replace this with a notice requirement.
— Gaming Machines RRO removes the requirement to play with coins only but introduces a new requirement that it must be possible to redeem smart cards on the premises.

3.3 In the coming year the first large RRO proposals will come through—the Patents RRO should be laid before the summer recess, the Fire Safety RRO shortly after recess and Civil Registration Service Modernisation will go out to consultation in July. These RROs will act as important flagships and should demonstrate the ability of the RRA to implement major reforms.

Appropriateness

3.4 The Government believes that the role played by RROs in effective Bill management is a key outcome of the RRA. The Government will continue to assess Bill bids carefully to ensure that RROs are used to best effect. In general this will mean that reforms which can be delivered by RRO should be delivered by RRO. Final decisions will be policy specific and will depend upon the most effective route for delivering outcomes.

Disapplication of section 1(4) of the Act

3.5 The Government welcomes the Committee's views[10] that a disapplication in specific circumstances would not necessarily offend against the spirit of the Act. To date there have been two disapplications, in the Education Act 2002[11] (to stop it preventing the Voluntary Aided Schools RRO from being implemented) and the Human Fertilisation and Embryology (Deceased Fathers) Bill (to prevent problems with introducing the forthcoming Civil Registration Service Modernisation RRO).

[10] 1272, para. 38.
[11] Section 2(9). http://www.legislation.hmso.gov.uk/acts/acts2002/20020032.htm.

3.6 The Government wishes to avoid continued disapplications, which could dilute the intended effect of section 1(4) of the RRA. However, there may sometimes be no alternative. For example, the reforms contained in the Deceased Fathers Bill were considered too controversial to be included in the Civil Registration RRO proposal, and the reforms contained in the proposed RRO are too broad and dissimilar to be included in the Bill.

3.7 With the Gaming Machines RRO it has not proved possible to implement the full range of proposals originally intended because of the two year rule. The Gaming Act (Variation of Monetary Limits) Order 2001 had amended sections of the Gaming Act 1968 which the RRO had also proposed to amend. The proposals dropped from the RRO are now to be included in a forthcoming Gambling Bill, and this has highlighted the need for Departments to plan their overall work effectively.

3.8 Section 1(4) of the Act did not perhaps anticipate the role RROs can play in parallel to Bills, as a part of wider policy reforms. So far it has usually been the RRO that has been implemented first, but Departments will need to remain alert to the implications of section 1(4), and to the possible need for disapplication. Training and awareness raising amongst Bill teams and officials involved in policy reviews will highlight this issue, but responsibility remains with Departments for effective project planning.

Interpretation of vires

3.9 The Government intends to issue a guidance note on the meaning of the term "burden" and, having been cleared by the Law Officers, the final draft is now with Legal Advisers to the Committees for comment. Clarifying vires issues, particularly the definition of burdens, has slowed down the process of specific reforms and perhaps slowed down the process of identifying new proposals. The Government accepts that this was probably inevitable given the ground-breaking nature of the RRA.

3.10 The Government intends to produce further advice for Departments on the inclusion of regulation making powers in RROs and implementing EU directives in RROs. Although not as significant as the guidance on burdens this advice should also help to clarify the powers of the RRA and enable the successful identification of suitable reforms.

Resources

3.11 The Government notes that even small RROs require resources more comparable to a small Bill than secondary legislation. The high level of resourcing required by Departments for small (but beneficial) reforms can sometimes act as a disincentive. RROs are usually not high profile reforms and work is sometimes done by less experienced officials. The same period of scrutiny is afforded both to major reforms and very small amendments. Given the power of the Act a high degree of scrutiny is appropriate, but it should be proportionate. The Government is likely to consider this issue further in any future review of the RRA.

Summary

3.12 In summary, although the working of the RRA is complex, the Government believes that significant reforms have been delivered and further measures are in preparation. The Fire RRO to be laid this autumn will be the first RRO to reform and consolidate an entire regulatory regime presently scattered over numerous Acts and regulations. For the next year the emphasis will remain on making full use of the existing powers. As larger proposals are laid the Government would particularly welcome the Committees views on the workings of the RRA with regard to these reforms.

4 Number of RROs

4.1 The Government's initial projections were for 40 RROs to be delivered by the end of the 2003 calendar year, but this was based on predictions made when only one RRO had been made. 16 of the original proposals are now being pursued by other means. Only one proposal has been dropped altogether because of specific policy concerns. New proposals have replaced these original proposals, but it will take longer for these to be delivered.

4.2 Annexes A to D give details of the number of RROs delivered so far, RROs under development, new proposals, and RRO proposals which have been dropped or delivered by other means. Annex E also highlights the complexity of forthcoming reforms.

4.3 The Cabinet Office has an objective included in its Public Service Agreement (PSA), to deliver over 260 deregulatory measures included in the Regulatory Reform Action Plan (RRAP)[12], published in February 2002. The PSA target includes a specific commitment to deliver over 60 RROs by the end of 2005. In order to achieve this the Cabinet Office is encouraging Departments to identify and deliver more reforms.

[12] http://www.cabinet-office.gov.uk/regulation/actionplan/index.htm.

4.4 This year's Budget report highlighted over 500 deregulatory measures identified by the Government[13]. These measures included RRAP proposals. The Budget also announced the new requirement for Departments to include details of their regulatory performance in their annual reports. This reporting will include details of the number of RROs delivered. However, the Government notes that whilst it is important to demonstrate the effective working of the RRA, the overall the focus will be on the total number of reforms delivered, rather than the means of delivery.

4.5 The Cabinet Office has recently written to Departments to request that they update their entries in the RRAP and identify new proposals which will be taken forward both via RRO and other means. This update will be published in the autumn. Based on current entries in the RRAP and departmental timetables, we estimate that 13 RROs will be delivered in 2003–04, a further 20 RROs will be delivered in 2004–05 and another 15 in 2005–06. However, it is to be expected that these figures will change over time, both as other policy and legislative routes are found to be more appropriate, and new proposals are included. Following the update of the RRAP, the Government will report to the Committee on the number, estimated timetable and scope of new proposals which have been identified.

4.6 In addition to the RRAP update, the Government has a proactive work programme to identify new measures and raise the status of RROs. Examples are as follows:

- The Minister for the Cabinet Office will again be raising the profile of RROs with Regulatory Reform Ministers across Whitehall through meetings and inter-departmental correspondence.
- The Cabinet Office Regulatory Impact Unit (RIU) will be working closely with both Legislative Planning Committee Secretariat and Departmental officials co-ordinating Bill bids, to ensure that Parliamentary time is used to best effect. This will enable them to identify potential measures within Bill proposals that can be delivered by RRO.
- The Cabinet Office RIU is responsible for ensuring delivery of the Business Manifesto commitment for post hoc reviews of major pieces of legislation. It is the intention that these reviews should feed directly into proposals for reducing regulatory burdens including by use of RRO.
- The Law Commission has agreed to include draft RROs instead of draft Bills in its reports, where appropriate.

5 The Future

5.1 The April 2003 Budget noted that the DTI are currently reviewing the Enforcement Concordat and made specific reference to using the power within the RRA to place the Enforcement Concordat on a statutory basis[14], should the working of the Concordat prove to be inadequate. The Government recognises that the enforcement of regulations is a significant factor in ensuring that regulations are working effectively, and not imposing unintended burdens on businesses or others.

Review of the Regulatory Reform Act

5.2 The Government is committed to reviewing the effectiveness of major pieces of legislation and it is right that the RRA should be included in this. Annual memorandums already begin the process of collecting evidence for a future review. However, the first priority is to demonstrate what the Act can do and then consider lessons learned from the initial programme of RROs. For now the Government is content to make full use of the significant power within the RRA, and looks forward to taking forward the major Patents, Fire and Civil Registration RRO proposals this year. The Government will undertake a formal review once there is a sufficient body of evidence on the effectiveness of the Act. The Government would welcome the Committee's views on this approach.

Role of the Cabinet Office

5.3 The first memorandum anticipated a declining role for the Cabinet Office in the RRO process[15]. As this memorandum suggests, there is still an important central role to be played by the Cabinet Office in this respect. As the use of the RRA is new there is work to be done in raising awareness and supporting the identification and implementation of proposals. The Government still envisages Departments eventually taking more responsibility for delivering and handling their own RROs, but for the time being the Cabinet Office will maintain its co-ordinating and advisory role.

[13] http://www.cabinet-office.gov.uk/regulation/WhatsNew/Regulatory%20Reform%20Commitments9April.pdf.

[14] Budget Report 2003, Chapter 3, para 33.
http://www.hm-treasury.gov.uk/media//2E3BD/03_Meeting%20%Pro_EF.pdf

[15] HC 1029, para. 4.40.

Ideas from MPs

5.4 In its first memorandum the Government invited MPs to identify proposals for reform by RRO[16]. So far no such proposals have been forthcoming. It is probably more appropriate to seek MPs support in identifying areas where Government intervention, including regulations, are creating unnecessary burdens, rather than focussing on specific proposals for RROs. It should be for the Government then to decide on the most appropriate means of removing such burdens, whether by amended regulation, including RROs, or other means. The Cabinet Office would be pleased to provide training and advice to MPs on both RROs and the wider better regulation agenda and would welcome the Committee's views on this.

Cabinet Office
June 2003

Annex A

RROs DELIVERED SO FAR

There have been a total of 13 RROs delivered since the introduction of the Regulatory Reform Act.

RRAP Number	*Title*	*Dept*	*Date Made*
PRIOR TO RRAP	Special occasion licensing	DCMS	Made 6 December 2001
1.1	Alcohol licensing: The Queen's Golden Jubilee	DCMS	Made 27 March 2002
NEW ENTRY	Alcohol licensing: All future New Year's Eves	DCMS	Made 20 December 2002
1.42	Agriculture: sugar beet research programme	DEFRA	Made 8 May 2003.
2.46	School funding: simplifying arrangements for premises work at voluntary aided schools	DfES	Made 27 March 2002
1.114	Partnerships: abolition of the 20 partner limit	DTI	Made 20 December 2002
3.34	People with disabilities: Invalid Care Allowance	DWP	Made 29 May 2002
3.6	People with disabilities: vaccine damage	DWP	Made 15 June 2002
1.56	Credit Unions—removal/ reduction of certain operational restrictions	HMT	Made 6 February 2003
1.94	Housing: Private sector housing renewal	ODPM	Made 18 July 2002
NEW ENTRY	Housing—timing of rent increases for assured periodic tenancies	ODPM	Made 11 Feb 2003
NEW ENTRY	Delegation of housing management	ODPM	Made 27 March 2003
NEW ENTRY	Housing—cash incentive schemes	ODPM	Made 31 March 2003

[16] HC 1029, para. 4.49.

Annex B

CURRENT RRAP RRO PROPOSALS UNDER DEVELOPMENT

Out of the original 63 RRO proposals which were contained in the Regulatory Reform Action Plan (RRAP), there are 39 which are still under development.

RRAP Number	*Title*	*Department*
1.12	Gaming machines	DCMS
2.37	Museums and galleries: a series of reforms to remove regulatory burdens	DCMS
2.8	Public statues	DCMS
1.69	Environment Agency: legislative review	DEFRA
2.23	Home Grown Cereals Authority	DEFRA
2.41	Royal Botanical Gardens, Kew	DEFRA
1.165	Wildlife: dangerous wild animals	DEFRA
1.87	Health and safety—HSE access to agricultural data	DEFRA
3.13	Driving: acceptance of EC/EEA driving licences originating in a designated country	DfT
3.26	Maritime employment disputes	DfT
1.125	Road traffic regulation review	DfT
1.147	Taxi/private hire vehicle regulation	DfT
3.14	Driving: acceptance of non-designated driving licences originating in a designated country	DfT
1.153	Vehicles: car checking companies—providing information	DfT
1.154	Vehicles: cherished number transfers	DfT
1.157	Vehicles: mandatory mileage recording	DfT
1.49	Charities: removal of the dual accounting burden on NHS charities	DoH
1.107	Medicines licensing	DoH
2.1	Cancer cures: advertisements (being taken forward under Local Authority consent regimes proposal)	DoH
1.54	Copyright law clarification	DTI
1.58	Directory publications	DTI
1.16	Patents law improvements	DTI/Patents Office
1.149	Trading Stamps: repealing the Trading Stamps Act	DTI
1.20	Weight and measures: simplification	DTI
1.15	Offshore windfarms: easing the consents procedure	DTI/DEFRA
3.21	Health: compensation for work-related dust-based illnesses	DWP/HSE
3.2	Civil Registration Service: modernisation	HMT/ONS
1.7	Charities: reducing the burdens	HO
3.36	Sexual offences: access to victim material	HO
1.148	Third parties—rights against insurers	LCD
1.100	Legal instruments (formalities)	LCD
1.130	Solicitor's professional regulation	LCD
1.6	Business tenancies	ODPM
1.47	Building regulations—self-certification by competent enterprises	ODPM
1.48	Building regulations: Approved Documents	ODPM
1.10	Fire safety legislation reform	ODPM
1.102	Local Authorities Business leaseholds, public interest provisions	ODPM
2.29	Local authorities consent regimes	ODPM
3.38	Tree Preservation Order system	ODPM

Annex C

CURRENT RRO PROPOSALS NOT IN ORIGINAL RRAP

Apart from the 5 new RROs which were not included in the RRAP but which have already been delivered, there are a further 11 which are undergoing development.

Title	*Department*
Museum of London—removal of geographical restrictions	DCMS
Licensing of sports grounds	DCMS
Modernisation of the agricultural wages legislation.	DEFRA
Joint nature conservation committee	DEFRA
British Waterways Board	DEFRA
Introducing the EUCARIS System Treaty into UK Legislation	DfT
PSV and HGV licensing	DfT
Sunday trading notification requirements	DTI
Reform of Forestry Act 1967 to allow the Forestry Commissioners to form companies, joint ventures, and to modernise administration of the FC estate	FC
Prison Officer strikes	HO
Welsh Ombudsman	WO

On top of these there are several proposals for RRO which are in early stages of development, which we will add as appropriate following our update of the RRAP in the autumn.

Annex D

RRO PROPOSALS DROPPED OR DELIVERED BY OTHER MEANS

There are 17 RRO proposals which were contained in the RRAP that are no longer being taken forward by RRO. 16 of these proposals have been taken forward by means other than RRO and 1 further proposal has been dropped altogether.

RRO proposals taken forward by other means

RRAP Number	*Title*	*Department*	*Comment*
2.18	English Heritage: overseas trading functions and underwater archaeology	DCMS	Was able to be included in the National Heritage Bill.
1.164	Welsh Sunday opening polls	DCMS	To be included in the Alcohol and Entertainment Licensing Bill.
2.14	Consumers Committee for GB and Committee of investigation for GB	DEFRA	Law officers advise that this could not be delivered by RRO.
3.15	Driving disqualification's and penalties—mutual recognition between GB and NI	DfT	Now included in the Home Office Bill, Crime (International Co-operation).
3.17	E-business: electronic links to Benefits Agency	DfT	Being pursued under primary legislation due to vires issues.
3.18	E-business: electronic links to UK Passport Service (UKPS)	DfT	Being pursued under primary legislation due to vires issues.
1.9	Corporate dentistry	DoH	To be delivered via a Section 60 Order of the Health Act by early 2004, as legal advice determined this was more appropriate route.
2.7	Public health: a new national agency for infection control and health protection	DoH	Because of difficulties identified with the RRO route, taken forward via primary legislation. The HPA was set up on 1 April 2003.

RRAP Number	*Title*	*Department*	*Comment*
1.123	Radio Spectrum Trading	DTI	Provisions were included in the Communications Bill.
2.9	Schools: free school meals	DWP/ DfES	Legal advice suggested that RRO not suitable. Looking to pursue via data sharing bill.
1.99	Rule against excessive accumulations.	LCD	Dropped on Law Officers advice. Looking to take forward via primary legislation.
3.8	Administration orders for personal insolvency	LCD	Advised by Counsel not suitable for RRO route—being taken forward via primary legislation.
3.1	Civil justice reforms	LCD	Being pursued by primary legislation as deemed more appropriate route.
3.3	Damages: periodical payments	LCD	LP approval to inclusion in Courts Bill (2nd session)
2.34	Local authorities: annual reports to tenants	ODPM	Being pursued by primary legislation following legal advice.
2.27	Housing standards: repeal of "minded to" notices	ODPM	Now being taken forward under the Housing Bill.

RRO proposals dropped altogether

RRAP Number	*Title*	*Department*	*Comment*
3.4	Driving: removal of the requirement to surrender a driving licence when changing personal details	DfT	Further research revealed this proposal to be liable to abuse. Ministerial approval withdrawn.

Annex E

RROs WE EXPECT TO BE LAID FOR "FIRST STAGE" SCRUTINY THIS CALENDAR YEAR

We expect to lay the following 12 proposals by the end of this calendar year. Subject to scrutiny, these could all come into force by the end of this reporting year (April 2004), although it is more realistic to say 10 of these will come into force over this period.

Name of Proposal	*Department*	*Target laying date*	*Complexity/length*
Reform of patents legislation	PO/DTI	June/July	Quite complex/long
Execution of deeds and documents	LCD	June	Straightforward/short
Welsh Ombudsman	WO	September/ October	Straightforward/short
NHS charity accounting	DoH	September/ October	Straightforward/short
Sunday trading	DTI	September/ October	Straightforward/short
Directory publications	DTI	September/ October	Straightforward/short
Fire Safety	ODPM	September/ October	Quite complex/long
Trading stamps	DTI	October	Straightforward/short
Museum of London	DCMS	October/ November	Straightforward/short
Weights and measures	DTI	November	Quite complex/medium
Maritime employment disputes	DfT	November	Straightforward/medium
Third parties rights against insurers	LCD	November/ December	Straightforward/medium

These are in addition to the three additional proposals which have undergone or are currently undergoing scrutiny:

— British Waterways Board.

— Business Tenancies.

— Gaming Machines.

APPENDIX 2

Letter from the Chairman of the Committee to the Minister for Regulatory Reform

Following yesterday's oral evidence session, there are still a few matters on which we seek clarification. We have opted to raise these matters in writing, rather than referring to them during the oral evidence session, because they are relatively minor in nature. We are likely to publish your response to these questions alongside the Cabinet Office memorandum, to ensure that the import of the memorandum is entirely clear.

PARAGRAPH 3.2 OF THE CABINET OFFICE MEMORANDUM

The matters on which we seek clarification all arise from paragraph 3.2 of the Cabinet Office memorandum. Paragraph 3.2 lists a number of ways in which the Regulatory Reform Act 2001 can, in the Government's view, be used to deliver reforms. This list appears to contain a number of inaccurate statements. In particular:

Transposing EU directives

The memorandum suggests that regulations made under section 2(2) of the European Communities Act 1972 to implement EU directives in UK law cannot amend primary legislation. Clearly, such a suggestion would be incorrect, given that section 2(4) of the 1972 Act enables section 2(2) regulations to make any such provision as might be made by Act of Parliament.

What is your understanding of the scope of section 2(2) regulations, and the scope for implementing EU obligations under the Regulatory Reform Act?

Simplification and modernisation of whole regimes

The memorandum suggests that the Regulatory Reform Act enables the tidying up and modernisation of overlapping and out-of-date legislation, with nothing more.

Our understanding of the Act is that it would enable a proposal to effect such tidying up and modernisation *only so long as* the proposal reduced or removed a burden. Tidying up or modernising an area of law is not a purpose which can be achieved under the Act.

Do you agree with our interpretation of the powers of the Regulatory Reform Act in respect of tidying up and modernisation of overlapping and out-of-date legislation?

Broadening powers

The memorandum suggests that regulatory reform orders can be used to broaden the powers of an individual or organisation, regardless of what the proposed new powers may be.

It is correct that the Regulatory Reform Act may be used to extend the statutory powers of a person or body. However, in our opinion, such powers can be extended only in an appropriate and relevant way. The extension could make it easier for the person or body to carry on their existing activities, for example by creating or enlarging a power to borrow. Alternatively, it could result in the person or body engaging in activities which they previously did not engage in, if the absence of power to engage in them can reasonably be regarded as affecting the person or body in the carrying on of their existing activities. We consider it is doubtful whether reform under the Act could add powers to undertake activities wholly unconnected with the person or body's existing purposes.

What is your understanding of the extent to which regulatory reform orders can be used to broaden the statutory powers of a person or body?

Removing restrictions and requirements

The memorandum states that there is no reason in principle why a regulatory reform order could not be used to set up a new agency to oversee a simplified regime. No regulatory reform order has yet done this. The memorandum provides no supporting argument to substantiate this claim.

On what grounds do you consider that a regulatory reform order could be used to set up a new agency to oversee a simplified regime?

Thank you for your consideration of these matters. We look forward to receiving your response.

2 July 2003

APPENDIX 3

Letter from the Minister for Regulatory Reform to the Chairman of the Committee

THE OPERATION OF THE REGULATORY REFORM ACT 2001: FURTHER QUESTIONS

Thank you for your letter of 2 July 2003, in which you have asked several further questions relating to paragraph 3.2 of our memorandum on regulatory reform order making over the last financial year. I am glad to note that you also found the evidence session productive, and I also look forward to further developing my working relationship with the Committee.

I have addressed each question individually below, and trust these answers will clarify the issues you have raised. I also thought it would be useful to open discussion on the issue of making changes to a regulatory reform order (RRO) between the two stages of scrutiny, which are not in response to representations. This is an issue which has recently been raised by the Committee Clerk, and we would find it useful if the Committee could let us have their thoughts on the matter.

What is your understanding of the scope of section 2(2) regulations, and the scope for implementing EU obligations under the Regulatory Reform Act?

We understand that 2(2) regulations can amend primary legislation but cannot address matters which are not related to the relevant EU obligations. It is possible under the Regulatory Reform Act (RRA) to reform an entire regulatory regime found in primary legislation, whether or not parts of the regime implement EU obligations. We would only consider using a Regulatory Reform Order (RRO) where the aim is to rationalise a full regime, rather than just implement EU obligations.

We aim to produce guidance on the implementation of EU Directives later this year which will cover this area in a lot more depth, and we will involve the Committee when drafting this.

Do you agree with our interpretation of the powers of the Regulatory Reform Act in respect of tidying up and modernisation of overlapping and out-of-date legislation?

We do agree with the Committee's interpretation of the powers of the RRA. The paragraph you refer to in your letter was intended to be a summary of the potential scope of the RRA. The kind of reforms we mention, including the tidying up and modernisation of legislation, can only be attempted should the proposal be within the vires of the RRA and meet the usual legal tests, such as ensuring a burden is being removed or reduced.

What is your understanding of the extent to which regulatory reform orders can be used to broaden the statutory powers of a person or body?

I have attached our recently published guidance note on burdens at Annex A, which details our understanding of how RROs can broaden powers. We agree that it would be doubtful that the RRA could be used to add powers to undertake activities which a body did not previously engage in. The examples given in the memorandum were to show that a broadening of powers is possible via an RRO but again, this has to be viewed in the wider context of falling within the vires of the RRA, and each proposal would have to be looked at on a case by case basis.

On what grounds do you consider that a regulatory reform order could be used to set up a new agency to oversee a simplified regime?

A RRO may repeal an existing regulatory regime, including a body responsible for enforcing the regime. Removing the powers to impose a burden, such as a power to impose a penalty or requirement is removing a burden for the purposes of the RRA (section 2(2) of the RRA). If all a body's powers are removed it may be dissolved as an incidental or supplemental matter under section 1(6) of the RRA. There would be no point in preserving a body which had no remaining functions. The same RRO could create a number of new burdens, including the power to impose a new penalty or requirement, conferred on a new body created for that purpose under section 1(6). There would be a new regulatory regime, including a new body responsible for enforcing it, subject of course to all the statutory tests for the creation of new burdens being met.

Amendments made to an order between first and second stage scrutiny that are not in response to representations received.

The RRA does not address the issue of changes being made to an RRO between first and second stage scrutiny, otherwise than in light of representations. The fact that the RRA assumes that changes will be made in response to representations does not preclude changes being made for other reasons.

Our view is that although departments should be expected to get their order right the first time round, should a department wish to make a beneficial amendment, then that amendment should be able to be made. It would be illogical to ignore changes that improved the working of the order, so long as the change could not be seen in any way to alter the scope of the proposal that was originally consulted on. Such an amendment would have to be justified in the accompanying document, and the Committees would of course be free to take a view on it. But we do not think it would be sensible that in every case where the department suggested a change that the order would have to be relaid for first stage scrutiny.

Should the suggested change affect the persons consulted so that they might have expressed a different view in response to the consultation, then the department should be expected to undertake further consultation on the issue. If it is unclear whether or not the proposed change is one of substance, we consider it would be right to seek without prejudice advice from the Committees on the specific amendments, the reasons for making the changes and their potential effect.

I hope this has clarified the meaning of our memorandum, and look forward to hearing from you in due course regarding the issue I have raised above.

9 July 2003

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 Draft Deregulation (Bingo and other Gaming) Order 2002 Proposal for the Regulatory Reform (Golden Jubilee Licensing) Order 2002	599
Sixth	Proposal for the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	663
Seventh	Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002 Draft Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	677
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 Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	708
Tenth	Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 Draft Regulatory Reform (Carer's Allowance) Order 2002	807
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 Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2002	82
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 Draft Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	329
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
Fourteenth	Draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 Draft Regulatory Reform (Gaming Machines) Order 2003	1210

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