



House of Commons
Regulatory Reform Committee

Draft Legislative Reform (Civil Partnership) Order 2010

First Report of Session 2010–11

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 9 November 2010*

The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

Current membership

Mr Robert Syms (*Conservative, Poole*) (Chair)
Heidi Alexander (*Labour, Lewisham East*)
Mr David Anderson (*Labour, Blaydon*)
Andrew Bridgen (*Conservative, North West Leicestershire*)
Jack Dromey (*Labour, Birmingham, Erdington*)
Lilian Greenwood (*Labour, Nottingham South*)
Ben Gummer (*Conservative, Ipswich*)
John Hemming (*Liberal Democrat, Birmingham, Yardley*)
Gordon Henderson (*Conservative, Sittingbourne and Sheppey*)
Andrew Jones (*Conservative, Harrogate and Knaresborough*)
Ian Lavery (*Labour, Wansbeck*)
Brandon Lewis (*Conservative, Great Yarmouth*)
Andrew Percy (*Conservative, Brigg and Goole*)
Valerie Vaz (*Labour, Walsall South*)

Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/regrefcom. A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are John Whatley (Clerk), John-Paul Flaherty (Inquiry Manager) and Liz Booth (Committee Assistant). Assistance was also provided for this report by Neil Caulfield (former Inquiry Manager).

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Delegated Legislation Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is regrefcom@parliament.uk.

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Summary

The draft Legislative Reform (Civil Partnership) Order 2010 and Explanatory Document were laid before Parliament by the Foreign and Commonwealth Office on 25 October 2010 under section 14(1) of the Legislative and Regulatory Reform Act 2006 (the “LRRR”). The FCO has recommended that the negative resolution procedure apply.

The draft Order is uncontroversial, seeking to amend the Civil Partnership Act 2004 to allow registration of civil partnerships by locally engaged consular staff rather than only by officers of Her Majesty’s Diplomatic Service as is currently the case.

We believe that all statutory preconditions and tests have been met; in particular, we do not believe that the Order will prejudice any existing protection. All responsibilities relating to the consultation procedures set out in section 13 of the LRRR and all requirements associated with laying under section 14 appear to us to have been properly fulfilled. However, we believe that the affirmative procedure should apply as the proposal embodies more than a *de minimis* change in the law.

We therefore recommend that the affirmative resolution procedure should apply and that the draft Order be approved.

1 What the draft Order proposes

1. The draft Legislative Reform (Civil Partnership) Order 2010 and Explanatory Document (ED) were laid before Parliament by the Foreign and Commonwealth Office (FCO) on 25 October 2010 under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA). The FCO recommended that the negative resolution procedure should apply to the draft Order.

2. Section 210 of the Civil Partnership Act 2004 (CPA 2004) currently provides for registration of civil partnerships at British consulates subject to “the presence of a prescribed officer of Her Majesty’s Diplomatic Service (HMDS)”. As the ED explains, at the time the CPA 2004 came into force all UK consular sections had at least some British consular officers who were officers of HMDS and thus able to undertake civil partnership registrations under section 210.¹ However, since then there has been a programme of change across the overseas network with the result that many consular officer jobs are now filled locally. Consequently, consular posts with only locally engaged staff are now unable to comply with the requirements of the CPA 2004 for registering a same sex partnership, a situation which will apply more widely as the localisation programme continues.

3. The draft Order seeks to amend the Civil Partnership Act 2004 to allow locally engaged officials approved by the Secretary of State to conduct civil partnership registrations, as is already permitted in the case of marriages conducted overseas.² It would achieve this by amending the CPA 2004 so that those authorised to conduct civil partnership registrations include, in cases where there is no consular representative, persons authorised by the Secretary of State. The relevant staff are often already trained to carry out marriage ceremony work, but, where necessary, staff who undertake the additional work will be given suitable training.³

4. The proposal is uncontroversial, with consultation prompting only one response (from the gay equality organisation Stonewall) which was entirely in favour. Those actively consulted were, within Government: the Ministry of Justice, the FCO, the General Register Office, the then Department of Business, Enterprise and Regulatory Reform, Her Majesty’s Revenue and Customs, and the Department for Work and Pensions. Those consulted outside of Government were: Stonewall, the Gay and Lesbian Foundation, and the Consortium of Lesbian Gay Bisexual and Transgender Voluntary and Community Groups. The consultation document was also available on the FCO website for 12 weeks. As the only consultation response was entirely in favour, no changes were made to the draft proposal following consultation.

1 ED, paragraph 5

2 *ibid.*

3 ED, paragraph 13

2 Consideration of Applicable Statutory Preconditions and Tests

The preconditions and tests

5. The relevant statutory tests for us to consider are set out in the following sections of the LRRRA: 1 (requirement for removal or reduction of a legislative burden), 3 (preconditions), 13 (consultation) and 14 (requirements for laying). House of Commons Standing Order No. 141 also requires us to have regard to whether a draft Order appears to make inappropriate use of delegated legislation and to whether the draft Order gives rise to any issue under the criteria for consideration of statutory instruments set out in Standing Order No. 151.

6. Section 1 of the LRRRA stipulates that Minister of the Crown have power to make orders (legislative reform orders) to remove or reduce burdens, or overall burdens, resulting directly or indirectly for any person from any legislation (the phrase “overall burdens” having the effect of permitting orders in which some burdens are increased but the net effect is to reduce).⁴

7. The preconditions in section 3 are that:

- a) The policy objective intended to be secured by the provision could not be satisfactorily secured by other means;
- b) The effect of the provision is proportionate to the policy objective;
- c) The provision, taken as a whole, strikes a fair balance between the public interest and the interest of any person adversely affected by it;
- d) The provision does not remove any necessary protection;
- e) The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- f) The provision is not of constitutional significance.

8. Section 13 of the LRRRA requires Ministers to consult organisations representative of interests substantially affected by the proposals, together with, *inter alia*, relevant defined statutory bodies and such other persons as are appropriate. If, as a result of that consultation, it appears appropriate to the Minister to change the whole or any part of the proposals, there must be further consultation with respect to the changes.

9. Section 14 requires that, on laying of the draft Order, an explanatory document must explain the powers in the LRRRA under which the draft Order is to be made, introduce and give reasons for the provision, explain why the section 3 tests are considered satisfied, assess the extent of removal or reduction of burdens, identify and give reasons for any

⁴ Section 2 of the LRRRA deals with power to promote regulatory principles and is not relevant to the present measure

function of legislating (and relevant procedural requirements attached thereto), and give details of the consultation, the responses to consultation, and any changes made.

10. The criteria for assessing statutory instruments under Standing Order 151 are principally: whether the measure imposes a charge on public revenues; whether it contains an ouster of court jurisdiction; whether it has purported retrospective effect without authority in the parent statute; unjustifiable delay in publication or laying; doubtful vires or unexpected use of statutory powers under which it is made; need for elucidation; and defective drafting.

Application of tests and preconditions to current proposal

11. The current situation means that consular clients are potentially faced with the need to travel to an area where a consular officer is available. The alternative is that a consular officer travels to the relevant territory. Neither situation is particularly satisfactory or consistent with the facility of operation apparently intended by the CPA 2004.⁵ The ED sets out several instances of the inconvenience caused by the current position, including cancellations of planned ceremonies with concomitant expense, not to mention distress. **We agree that this constitutes a burden within the terms of the LRRRA, which includes within its definition of “burden” both financial cost and administrative inconvenience.**⁶

12. **We do not believe that requiring civil partnerships to be conducted by consular officers when no such requirement exists in relation to marriage can in any sense be construed as a “necessary protection.” All the other preconditions in section 3 appear to be met self-evidently: the objective can only be achieved through a change to the law, the measure is proportionate and does not affect any pre-existing rights or freedoms, and there are no adversely affected persons.**

13. The consultation procedure set out in paragraph 3 of this Report meets the requirements of section 13, and the procedural requirements for laying set out in section 14, including provision of a satisfactory ED, have been complied with. There appear to be no objections under the Standing Orders. **We therefore conclude that all relevant preconditions and tests have been met.**

3 Conclusion

14. The proposed change would remove an administrative inconvenience and thus serve the purpose of removing or reducing a burden as set out in section 1(2) of the LRRRA. Satisfactory consultation was undertaken and it is apparent that the proposal passes the tests that this Committee is required to consider. Notwithstanding the uncontroversial nature of the measure, however, we take the view that it represents a greater than *de minimis* change in the law and for that reason believe that the affirmative resolution procedure is appropriate. **We therefore recommend that the affirmative resolution procedure should apply and that the draft Order be approved.**

⁵ See Impact Assessment

⁶ Section 1(3)(a) and (b)

Formal Minutes relating to the report

Tuesday 9 November 2010

Members present:

Mr Robert Syms, in the Chair

Heidi Alexander
Andrew Bridgen
Ben Gummer
John Hemming
Gordon Henderson

Andrew Jones
Ian Lavery
Brandon Lewis
Andrew Percy
Valerie Vaz

Draft Report (*Draft Legislative Reform (Civil Partnership) Order 2010*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 14 read and agreed to.

Summary agreed to.

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

Ordered, That the Chair make the Report to the House.

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