Publication of the draft Regulatory Reform Bill

Cm 4713

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and Chancellor of the Duchy of Lancaster
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Introduction

The Regulatory Reform Bill is a key part of the Government's regulatory reform agenda.

The main provision of the Regulatory Reform Bill is intended to remove some of the barriers to wider application of the deregulation order-making power under sections 1-4 of the Deregulation and Contracting Out Act 1994 (DCOA). The new order-making power is intended to be wide enough, but no wider than necessary, to deal with useful regulatory reform measures which the Government wishes to achieve. In parallel with the widening of the power, the Bill strengthens the tests and safeguards governing its use. The Bill also makes provision to replace section 5 of DCOA, which is concerned with enforcement of regulations, replacing a little-used procedure with a reserve power for Ministers to set out a code of good practice in enforcement.

The Bill was announced in the Queen's Speech. The Government has decided to publish the Bill in draft, so that the Deregulation Committee in the House of Commons and the Delegated Powers and Deregulation Committee in the House of Lords can consider it and report formally to Parliament on the proposals.

Contents

The Command Paper comprises the following parts:

- Draft Regulatory Reform Bill
- Explanatory Notes for the draft Bill
- Regulatory Impact Assessment for the draft Bill

Each of these parts retains its own page numbering.

Illustrative Examples

The Government recognises that this is largely a technical Bill and that, particularly in relation to regulatory reform, examples to illustrate the scope of the proposed order-making power, together with its safeguards, are critical to a proper understanding of it.

Possible Regulatory Reform Orders

The Explanatory Notes contain a number of examples which, for ease of reference, can be grouped as follows:

Changes highlighted as not possible under the Regulatory Reform Bill

The Government is not seeking a power that goes broader than would be needed to achieve the type of reform illustrated by the examples given above. It has therefore framed the power (in clause 1(1)) for **the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity**. As a result, the following examples are highlighted as not possible under the new power:

	place in Explanatory Notes
• limited liability partnerships	paragraph 29
• constitutional change eg devolution or representation of the people	paragraph 30
• changes to judicial system eg Mode of Trial	paragraph 30
• organisation of local government eg Mayors	paragraph 30
• changes to Ombudsmen system	paragraph 30

Previous deregulation orders cited in the Explanatory Notes

The Explanatory Notes also refer to a number of previous deregulation orders that further illustrate the policy context of the Bill. They are:

	place in Explanatory Notes
• Millennium Licensing	paragraphs 6 & 64
• Registry Offices	paragraph 6
• Union subscriptions	paragraph 6
• Long Pull	paragraph 42
• Building Societies	paragraph 42
• Corn Returns	paragraph 42 & 57
• Casinos	paragraph 42
• Greyhound Racing	paragraph 45
• Bills of Exchange	paragraph 45

Background

Details of the background to the proposals in the Bill can be found on the Cabinet Office website at **http://www.cabinet-office.gov.uk/regulation/index/bill.htm**. This includes the Government consultation papers and links to the relevant reports by the House of Commons Deregulation Committee and the House of Lords Delegated Powers and Deregulation Committee.

This Command Paper is itself available at the following address: **http://www.official-documents.co.uk/document/cm47/4713/4713.htm**.

Regulatory Reform Bill

ARRANGEMENT OF CLAUSES

Power to make provision reforming law which imposes burdens

Clause

Enforcement practice

Supplementary

DRAFT

OF A

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TO

Enable provision to be made for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity and to enable codes of practice to be made with respect to the enforcement of restrictions, requirements or conditions. A.D. 2000.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Power to make provision reforming law which imposes burdens

1.—(1) Subject to subsections (3) and (4) and to sections 3 to 8, a Minister of the Crown may by order make provision for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity, with a view to one or more of the following objects— Power by order to make provision reforming law which imposes burdens.

(a) the removal or reduction of any of those burdens,

(b) the re-enacting of provision having the effect of imposing any of those burdens, in cases where the burden is proportionate to the benefit which is expected to result from its retention,

(c) the making of new provision having the effect of imposing a burden which—

(i) affects any person in the carrying on of the activity, but

(ii) is proportionate to the benefit which is expected to result from its creation, and

(d) the removal of inconsistencies and anomalies.

(2) In subsection (1) "legislation" means the law contained in any provision of—

(a) any Act (whether or not in force) which was passed at least two years before the day on which the order is made, or

(b) an order under this section or under section 1 of the Deregulation and Contracting Out Act 1994 (in this Act referred to as "the 1994 Act"), 1994 c. 40.

but does not include the law contained in any such provision in its application to Scotland where that provision would, if contained in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

(3) No order under this section may be made for the purpose of reforming the law contained in any provision of an Act if that provision has been amended, otherwise than merely for consequential or incidental purposes—

(a) by an Act passed not more than two years before the day on which the order is made, or

(b) by any subordinate legislation made not more than two years before that day,

but this subsection does not prevent an order under this section from re-enacting without substantive amendment any provision which has been so amended.

(4) An order under this section which removes or modifies any function of the National Assembly for Wales may be made only with the agreement of the Assembly.

(5) The provision that may be made by order under this section includes—

(a) provision amending or repealing any enactment,

(b) provision creating or imposing, or authorising or requiring the creation or imposition of, anything which would be a burden but for the fact that it affects only a Minister of the Crown or government department, and

(c) such incidental, consequential, transitional or supplemental provision as the Minister thinks appropriate.

(6) An order under this section may make different provision for different areas.

Meaning of "burden" and related expressions.

2.—(1) In this Act "burden" includes—

(a) a restriction, requirement or condition (including one requiring the payment of fees or preventing the incurring of expenditure) or any sanction (whether criminal or otherwise) for failure to observe a restriction or to comply with a requirement or condition, and

(b) any limit on the statutory powers of any person (including a limit preventing the charging of fees or the incurring of expenditure),

but does not include any burden which only affects a Minister of the Crown or government department.

(2) In this Act—

(a) any reference to creating or imposing a burden includes a reference to authorising or requiring a burden to be created or imposed,

(b) any reference to removing a burden includes a reference to removing the authorisation or requirement by virtue of which a burden may be imposed, and

(c) any reference to reducing a burden includes a reference to reducing the authorisation or requirement by virtue of which a burden may be imposed (for example, by restricting the circumstances in which it is authorised or required to be imposed).

Limitations on order-making power.

3.—(1) An order under section 1 may be made only if the Minister making the order is of the opinion that the order does not—

(a) remove any necessary protection, or

(b) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise.

(2) An order under section 1 may create a burden affecting any person in the carrying on of an activity only if the Minister is of the opinion that the provisions of the order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burden being created.

(3) If an order under section 1 creates a new criminal offence, then, subject to subsection (4), that offence shall not be punishable—

(a) on indictment with imprisonment for a term exceeding two years, or

(b) on summary conviction with imprisonment for a term exceeding six months or a fine exceeding level 5 on the standard scale.

(4) In the case of an offence which, if committed by an adult, is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of—

(a) Part V of the Criminal Justice Act 1988, or 1988 c.33.

(b) section 292(6) and (7) of the Criminal Procedure (Scotland) Act 1995, 1995 c. 46.

the reference in subsection (3)(b) to level 5 on the standard scale is to be construed as a reference to the statutory maximum.

(5) An order under section 1 shall not contain any provision—

(a) providing for any forcible entry, search or seizure, or

(b) compelling the giving of evidence,

unless a provision to that effect is contained in an enactment repealed by the order and the powers conferred by the provision to that effect contained in the order are exercisable for the same purposes as the powers conferred by the repealed enactment or for purposes of a like nature.

Statutory instrument procedure.

4.—(1) An order under section 1 shall be made by statutory instrument.

(2) Subject to subsection (6), no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(3) An order under section 1 may designate specified provisions of the order as subordinate provisions for the purposes of this section; and in the following provisions of this section references to the subordinate provisions of an order are references to the provisions so designated.

(4) In the following provisions of this section "a subordinate provisions order" means an order under section 1 which contains a statement that it makes only provision which either—

(a) modifies the subordinate provisions of an order previously made under that section, or

(b) is incidental, consequential, transitional or supplemental provision relating to the provision falling within paragraph (a).

(5) An order under section 1 which designates subordinate provisions may provide that the power to make a subordinate provisions order relating to those provisions is to be exercisable in relation to Wales—

(a) by the National Assembly for Wales,

(b) by the Assembly concurrently with a Minister of the Crown, or

(c) by a Minister of the Crown with the agreement of, or after consultation with, the Assembly;

and, in relation to the making of a subordinate provisions order, references in sections 1 to 3 to a Minister of the Crown shall so far as necessary be construed as being or including a reference to the Assembly.

(6) Subsection (2) does not apply to a subordinate provisions order, but any such order made by a Minister of the Crown shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Nothing in sections 5 to 8 applies in relation to a subordinate provisions order.

Preliminary consultation.

5.—(1) Before a Minister makes an order under section 1, he shall—

(a) consult such organisations as appear to him to be representative of interests substantially affected by his proposals,

(b) where his proposals relate to the functions of one or more statutory bodies, consult those bodies or organisations which appear to him to be representative of those bodies,

(c) in such cases as he considers appropriate, consult the Law Commission or the Scottish Law Commission,

(d) where the provision made by the order would extend to Wales, consult the National Assembly for Wales, and

(e) consult such other persons as he considers appropriate.

(2) In subsection (1) "statutory body" means—

(a) a body established by an enactment or by any instrument made under an enactment, or

(b) the holder of any office so established.

(3) If it appears to the Minister, as a result of the consultation required by subsection (1), that it is appropriate to vary the whole or any part of his proposals, he shall undertake such further consultation with respect to the variations as appears to him to be appropriate.

(4) If, before the day on which this Act is passed, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of subsection (1), those requirements shall to that extent be taken to have been satisfied.

Document to be laid before Parliament.

6.—(1) If, after the conclusion of—

(a) the consultation required by section 5(1), and

(b) any further consultation undertaken as mentioned in subsection 5(3),

the Minister considers it appropriate to proceed with the making of an order under section 1, he shall lay before Parliament a document containing his proposals in the form of a draft of the order, together with details of the matters specified in subsection (2).

(2) The matters referred to in subsection (1) are—

(a) the burdens which the existing law affected by the proposals has the effect of imposing,

(b) whether any of those burdens are removed or reduced,

(c) whether and, if so, how the proposals further the objects mentioned in section 1(1)(b), (c) and (d),

(d) whether the existing law affected by the proposals affords any necessary protection and, if so, how that protection is to be continued,

(e) whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom,

(f) whether the proposals would have the effect of creating a burden affecting any person in the carrying on of an activity and, if so, how the conditions in section 1(1)(c) and 3(2) are satisfied in relation to the burdens being created,

(g) whether any provisions of the proposed order are being designated as subordinate provisions for the purposes of section 4 and, if so, why they are being so designated,

(h) whether any savings or increases in cost are estimated to result from the proposals and, if so, either the estimated amount or the reasons why savings or increases in cost should be expected,

(i) any benefits (other than savings in cost) which are expected to flow from the implementation of the proposals,

(j) any consultation undertaken as required by section 5(1) or (3),

(k) any representations received as a result of that consultation, and

(l) the changes (if any) which the Minister has made to his original proposals in the light of those representations.

Representations made in confidence or containing damaging information.

7.—(1) Subsection (2) applies where a person ("the respondent"), in making any representations as a result of any consultation undertaken as required by section 5(1) or (3), requests that the Minister should not disclose the representations made by the respondent.

(2) Where this subsection applies, the Minister, in giving details of the representations referred to in section 6(2)(k), shall disclose the fact that the respondent has made representations, but shall not disclose the respondent's representations except—

(a) with the consent of the respondent and, where the information contained in the representations relates to any other person or business, of the person to whom the information relates or of the person for the time being carrying on the business, or

(b) in such a manner as not to identify them with that respondent or with that other person or business.

(3) Where a person, in making any representations as a result of any consultation undertaken as required by section 5(1) or (3), discloses information which relates to a third person, the Minister is not obliged to disclose that information in giving details of the representations referred to

in section 6(2)(k) if, or to the extent that—

(a) it appears to the Minister that the disclosure of that information could adversely affect the interests of the third person, and

(b) the Minister has been unable either to verify the information or to obtain the consent of the third party to the disclosure.

(4) Subsections (2) and (3) do not affect any disclosure which—

(a) is requested during the period for Parliamentary consideration, as defined by section 8(2), by any committee of either House of Parliament charged with reporting on the proposals in question, and

(b) is made to that committee.

Parliamentary consideration of proposals.

8.—(1) Where a document has been laid before Parliament under section 6(1), no draft of an order under section 1 to give effect (with or without variations) to proposals in that document shall be laid before Parliament until after the expiry of the period for Parliamentary consideration, as defined by subsection (2).

(2) In this section "the period for Parliamentary consideration", in relation to a document, means the period of sixty days beginning on the day on which it was laid before Parliament.

(3) In reckoning the period of sixty days referred to in subsection (2), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

(4) In preparing a draft of an order under section 1 to give effect, with or without variations, to proposals in a document laid before Parliament under section 6(1), the Minister concerned 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 document.

(5) Together with a draft of an order laid before Parliament under section 4(2), the Minister concerned shall lay a statement giving details of—

(a) any representations, resolution or report falling within subsection (4); and

(b) the changes (if any) which, in the light of any such representations, resolution or report, the Minister has made to his proposals as contained in the document previously laid before Parliament under section 6(1).

(6) Section 7 shall apply in relation to the representations referred to in subsection (5)(a) as it applies in relation to the representations referred to in section 6(2)(k), but with the omission of subsection (4).

Enforcement practice

Codes of practice relating to enforcement of regulatory requirements.

9.—(1) If it appears to the appropriate authority—

(a) that the effect of the provision made by any enactment is such as to impose, or to authorise or require the imposition of, a restriction, requirement or condition affecting any person, and

(b) that the practice followed by enforcement officers in relation to the enforcement of the restriction, requirement or condition ought to be improved so far as fairness, transparency and consistency are concerned,

the appropriate authority may issue a code of practice setting out recommended practice in relation to the enforcement of the restriction, requirement or condition.

(2) A code of practice under this section may, in particular, relate to—

(a) the practice to be adopted by all enforcement officers in enforcing all restrictions, requirements or conditions imposed by specified enactments, or

(b) the practice to be adopted by enforcement officers of a specified description, or by enforcement officers in specified areas.

(3) Where—

(a) a court or tribunal finds that a person has failed to comply with a restriction, requirement or condition,

(b) a code of practice under this section applies in relation to the enforcement of that restriction, requirement or condition, and

(c) it appears to the court or tribunal that there has been a failure to comply with the code,

the court or tribunal may take the failure to comply with the code into account in deciding how to deal with the failure to comply with the restriction, requirement or condition.

(4) A code of practice under this section may not include any provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament.

(5) In this section and section 10—

"the appropriate authority" means—

(a) in the case of a code of practice which relates to enforcement action which is a function of the National Assembly for Wales, the Assembly or a Minister of the Crown acting with the agreement of the Assembly, or

(b) in any other case, a Minister of the Crown;

"enactment" includes an enactment comprised in subordinate legislation but not an enactment comprised in Northern Ireland legislation, as defined by section 24(5) of the Interpretation Act 1978; 1978 c. 30.

"enforcement action"—

(a) in relation to any restriction, requirement or condition, means any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it, and

(b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence;

"enforcement officer" does not include—

(a) the Director of Public Prosecutions,

(b) the Lord Advocate or a procurator fiscal, or

(c) the Director of Public Prosecutions for Northern Ireland,

but, subject to that, means any person who is authorised, whether by or under an enactment or otherwise, to take enforcement action;

"licence" includes any authorisation (by whatever name called) to do anything which would otherwise be unlawful.

Making of codes of practice by Ministers of the Crown.

10.—(1) Where a Minister of the Crown proposes to issue or revise a code of practice under section 9, he shall prepare a draft of the code (or revised code).

(2) The Minister shall consult about the draft—

(a) persons appearing to him to be representative of enforcement officers who are authorised to enforce any of the restrictions, requirements or conditions to which the code of practice relates,

(b) if the draft relates to Wales, the National Assembly for Wales, and

(c) such other persons as he considers appropriate.

(3) If the Minister determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay a copy of the draft before each House of Parliament.

(4) If, within the 40-day period, either House resolves not to approve the draft, the Minister shall take no further steps in relation to the proposed code.

(5) If no such resolution is made within the 40-day period, the Minister shall issue the code (or revised code) in the form of the draft, and it shall come into force on such date as the Minister may by order made by statutory instrument appoint.

(6) Subsection (4) does not prevent a new draft of a proposed code from being laid before Parliament.

(7) In this section "40-day period", in relation to the draft of a proposed code, means—

(a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and

(b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(8) In this section references to a proposed code include references to a proposed revised code.

Making of codes of practice by National Assembly for Wales.

11.—(1) Where the National Assembly for Wales proposes to issue or revise a code of practice under section 9, the Assembly shall prepare a draft of the code (or revised code).

(2) The Assembly shall consult about the draft—

(a) persons appearing to the Assembly to be representative of enforcement officers who are authorised to enforce any of the

restrictions, requirements or conditions to which the code of practice relates, and

(b) such other persons as the Assembly considers appropriate.

(3) Any code issued by the Assembly shall come into force on such day as the Assembly may by order made by statutory instrument appoint.

Supplementary

Repeals and savings.

12.—(1) Sections 1 to 5 of, and Schedule 1 to, the 1994 Act (which are superseded by the provisions of this Act)—

(a) are hereby repealed as respects England and Wales and Northern Ireland, and

(b) shall cease to have effect as respects Scotland except in so far as they relate to the making of orders by the Scottish Ministers.

(2) Where a document has been laid before Parliament under section 3(3) of the 1994 Act before the day on which this Act is passed, but no draft of an implementing order has been laid before Parliament before that day, subsection (1) does not affect the application of sections 1 to 4 of that Act in relation to the making of an implementing order.

(3) In subsection (2) "an implementing order", in relation to any document laid before Parliament under section 3(3) of the 1994 Act, means an order to give effect (with or without variations) to proposals in that document.

(4) Subsection (1) does not affect the continuation in force of any order under section 1 of the 1994 Act which—

(a) was made before the day on which this Act is passed, or

(b) is made on or after that day by virtue of subsection (2).

Consequential amendments.

13.—(1) In section 6 of the 1994 Act (model provisions with respect to appeals), in subsection (7)—

(a) in the definition of "enforcement action", for "section 5 above" there is substituted "section 9 of the Regulatory Reform Act 2000, and

(b) for the definition of "interested person" there is substituted—

""interested person" means—

(a) the person against whom enforcement action may be or has been taken;

(b) any other person who will or may be required to meet, or to make a significant contribution towards, the cost of observing the restriction or complying with the requirement or condition; or

(c) where the enforcement action which may be or has been taken relates specifically to goods or services which are to be or have been supplied by a person other than the one against whom enforcement action may be or has been taken, that person;".

(2) This section does not extend to Scotland.

Interpretation.

14. In this Act—

1994 c. 40. "the 1994 Act" means the Deregulation and Contracting Out Act 1994;

"burden" and related expressions have the meaning given by section 2;

1975 c. 26. "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"subordinate legislation" has the meaning given by section 21(1) of the 1978 c. 30. Interpretation Act 1978;

1995 c. 38. "Wales" has the same meaning as in the Government of Wales Act 1998.

Short title and extent.

15.—(1) This Act may be cited as the Regulatory Reform Act 2000.

(2) This Act extends to Northern Ireland.

(3) An order under section 1 which amends or repeals any enactment extending outside the United Kingdom may have the same extent as the enactment amended or repealed.

DRAFT REGULATORY REFORM BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Regulatory Reform Bill. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The main provision of the Regulatory Reform Bill is intended to remove some of the barriers to wider application of the deregulation order-making power under sections 1-4 of the Deregulation and Contracting Out Act 1994 (DCOA). The new order-making power is intended to be wide enough, but no wider than necessary, to deal with regulatory reform measures which the Government wishes to achieve. In parallel with the widening of the power, the Bill adds to the tests and safeguards governing its use. This policy was the subject of a public consultation document published by the Cabinet Office on 2 March 1999. Both the Lords Delegated Powers and Deregulation Committee and the Commons Deregulation Committee reported on the proposals in their 14th and First Special Reports of the 1998-99 Session respectively (HL 55 and HC 324). The Government's formal responses to the two Committees' reports were also published in the Lords Committee's 28th Report of the 1998-99 Session (HL 111) and the Commons' Committee's First Special Report of the 1999-00 Session (HC 177).

4. The Bill also makes provision to replace section 5 of DCOA, which is concerned with enforcement of regulations, replacing a little-used procedure with a reserve power for Ministers to set out a code of good practice in enforcement. The Cabinet Office published a consultation paper on this policy on 28 September 1999. The Lords Delegated Powers and Deregulation Committee commented briefly on the

proposal in its 28th Report of 1998-99 (HL 111).

BACKGROUND

The existing deregulation order-making power

5. Sections 1-4 of DCOA provide a mechanism to change primary legislation for the purpose of removing or reducing burdens on business and others. The order-making power in section 1 allows a Minister to amend or repeal any pre-1994 legislation which imposes a burden affecting any person in the carrying on of any trade, business or profession or otherwise, provided doing so would not remove any necessary protection. The Minister may impose a new, less onerous regulatory regime if he wishes. The order-making power is constrained by the subsequent three sections. Section 2 limits the maximum penalties which can be imposed if a deregulation order creates a new criminal offence, and prevents orders from creating new powers to enter, search or seize property by force or to compel people to give evidence. Section 3 ensures that interested parties have an opportunity to comment on any proposed order, that their comments are considered by the Minister and that Parliament is aware of their views when the proposed order is laid for Parliamentary consideration. Section 4 sets out the procedure for Parliamentary consideration of the proposed order. It provides for a period of 60 days for consideration before the draft order can be laid.

6. The deregulation order-making power under DCOA has been used 46 times to date, to remove burdens from business and individuals which might not otherwise have received Parliamentary time. Orders have included, for example, removing the need for 3-yearly re-authorisation of deductions of union subscriptions from salary; permitting bookings at registry offices up to 12 months in advance instead of three; and relaxing the restrictions on opening hours of licensed premises over Millennium Eve. A full list of orders made under the power is at Annex A.

7. Deregulation orders are subject to thorough public consultation followed by detailed two-stage scrutiny by the Deregulation Committee in the House of Commons and the Delegated Powers and Deregulation Committee in the House of Lords. The special Parliamentary procedure which deregulation orders undergo (sometimes called the "super-affirmative" procedure, a term first coined by the House of Commons Procedure Committee in its1995 Report on Delegated Legislation (HC 152)) affords a greater degree of Parliamentary scrutiny than that which ordinary affirmative resolution orders receive. First, the Minister lays his deregulation proposal before Parliament "in the form of" a draft order. Following the 60 day period of Parliamentary consideration, during which time the proposal is referred automatically and simultaneously to the Parliamentary Deregulation Committees in both Houses, the Committees make their first report to their respective Houses. If the reports are favourable, the next stage is for the Minister formally to lay a draft order in each House, along with an explanation of any changes made compared to the earlier proposal. If the Minister is minded to accept any changes that are proposed to the

draft order by the Committees or others between this stage and the final vote on the order, he must formally take up the draft order he has laid and replace it with another which incorporates the changes. The ability to make changes (minor or otherwise) to the draft order while it is being scrutinised and in response to the scrutiny is a key feature of the order-making power, which is not available to statutory instruments dealt with in the usual way. Ministers in charge of past deregulation orders have on several occasions taken the opportunity to change their draft order in line with recommendations from the Committees. On no occasion has a Minister ignored an adverse report from either Committee; the proposed order has always been re-cast or withdrawn accordingly. The Government intends to continue this practice in its use of regulatory reform orders.

8. The final procedural stages for Parliamentary scrutiny of draft deregulation orders are set out in Standing Orders (reproduced at Annex B). The Commons Committee produces a report on the draft order within 15 days. The Lords Committee has no set time period but usually reports within the same time period. Both Houses then vote on the relevant Committee report on the draft order (this constitutes the "super-affirmative" aspect of the Parliamentary consideration). The procedure leading up to the final vote on the order differs in the two Houses. In the Commons, the way in which the draft order is dealt with depends on how the Committee reported. If Committee members voted unanimously to approve the draft order, the Motion to approve it is put to the House forthwith. If they voted to approve the draft order following a division of the Committee, there is a debate on the Committee's report lasting a maximum of one and a half hours, after which the Motion to approve the draft order is put. If the Committee recommended that the order not be made, and the Minister still wished to pursue the order, he is faced with two options: either he may take up the draft order and replace it with an amended draft, or he may table a Motion to disagree with the Committee report. The latter has never occurred in practice. If it were to happen, the debate on the Minister's Motion, which would be amendable, would last a maximum of 3 hours. If the House supported the Minister's Motion, a Motion to approve the draft order would be put forthwith. The final stage in the procedure is the vote to approve the order itself.

9. In the Lords, following the publication of the Committee's second report, the Minister tables a Motion that the House should approve the draft order. There is also the opportunity for a debate, if any peer wishes it, on an accompanying motion at the same time as the motion to approve a draft order. The companion motion is moved first and can be amended and voted on. There is a Government undertaking that, in the event of a motion hostile to a draft deregulation order being agreed to by the House, the motion for the draft order would not be moved (House of Lords Hansard 20 October 1994, col. 352).

Aspects of the proposed new order-making power

10. The current order-making power is limited in its scope. It has mostly been used for small items. The Regulatory Reform Bill seeks to extend the power so that it can be used more widely. The power is intended to be sufficiently wide, but no wider

than necessary, to achieve regulatory reform. The governing purpose in clause 1 restricts the scope of the power, and it is with this that any application for judicial review of an order made under the power would be concerned. There are a number of differences between the proposed new order-making power and the power under DCOA. Orders under the new power, which are expected to be called regulatory reform orders, will be capable of:

- making and re-enacting statutory provision;
- imposing additional burdens where necessary, provided they are proportionate and they strike a fair balance between the public interest and the interests of those affected by the new burden;
- removing inconsistencies and anomalies in legislation;
- dealing with burdensome situations caused by a lack of statutory provision to do something;
- applying to legislation passed after the Bill if it is at least two years old when the order is made and has not been amended in substance during the last two years;
- relieving burdens from anyone except Ministers and government departments (where only they would benefit); and
- allowing administrative and minor detail to be further amended by subordinate provisions orders, subject to negative resolution procedure.

11. The test of maintaining necessary protection is carried over from DCOA and supplemented by an additional test that no order should prevent anyone from exercising an existing right or freedom which they might reasonably expect to continue to exercise (the "reasonable expectations" test). Two further stringent tests (proportionality and fair balance) apply if an order would increase or impose a burden. The requirements for extensive public consultation and thorough scrutiny by two Parliamentary Committees will remain, but Ministers bringing forward regulatory reform orders will be required to present more explanatory information to Parliament than they did with deregulation orders, to reflect the wider powers and additional safeguards.

The existing enforcement provisions

12. Section 5 of DCOA was designed to provide protection for businesses against what was described in debate as "over-zealous or unreasonable application of regulations" (House of Lords Hansard 11 October 1994, col.832). Officers in central and local government enforce a number of regulatory requirements, for example, the requirements on public houses to limit their opening hours, to provide facilities such

as lavatories for customers and staff, to have arrangements in place to ensure safe storage and preparation of food and not to sell alcohol to children. Section 5 allows Ministers by order to apply the enforcement procedures set out in Schedule 1 of DCOA to named pieces of legislation. This gives Ministers powers to:

(i) require that when an enforcement officer informally tells a business that it should take some remedial action, before the question of formal action arises, the business is entitled on request to a written statement making clear what action is necessary and why;

(ii) require enforcers, where they take immediate enforcement action which would impose a significant cost, to provide a statement as soon as practicable explaining the reasons for the immediate action;

(iii) require enforcers to issue businesses with a notice that they are "minded to" take enforcement action. The business would then be entitled to have its point of view heard and taken into account within a specified period before any formal action was taken;

(iv) require that, when formal action is taken, the business should be told exactly what rights it has to appeal; and

(v) apply relevant provisions to third parties who have a direct economic interest in an enforcement decision.

13. Section 5 has been applied directly only once, in the Deregulation (Improvement of Enforcement Procedures) (Food Safety Act 1990) Order 1996, (SI no. 1996/1683)[1].

14. In December 1996, the then Conservative Government consulted on proposals to apply section 5 in the field of trading standards, care services and environmental health. The consultation exercise showed that local authority enforcers felt the "minded to" provisions were bureaucratic and could be manipulated by illegitimate businesses. Businesses were not entirely convinced either, and sometimes confused the "minded to" notice with formal enforcement action. However, there was a consensus about the value of discussing regulatory issues with business, explaining their rights and making a clear distinction between statutory requirements and good practice.

[1] The approach has also been applied indirectly by being written into Section 86 of the Housing Grants, Reconstruction and Regeneration Act 1996 and Section 377A of the Housing Act 1985 (inserted by the Housing Act 1996). Statutory guidance under the Health and Safety at Work etc Act 1974 issued in February 1996 also included the Section 5 procedure but this was replaced on 1 April 1998 by new guidance based on the Enforcement Concordat.

The new policy on enforcement

The Enforcement Concordat

15. Following the 1997 election, the Government reviewed the results of the consultation exercise. It decided not to pursue the section 5 procedures but to adopt a new approach based on co-operation between enforcers and those subject to enforcement. Representatives of business, the voluntary sector, the enforcement community and consumer groups were closely involved in the development of the Enforcement Concordat. The Concordat is a non-statutory code that describes for businesses and others what they can expect from enforcement officers. Central and local enforcement bodies commit themselves voluntarily to its principles and procedures. The full text of the Concordat is at Annex C.

16. The principles can be summarised as follows:

- standards – service standards that business can expect from local authority enforcers will be published annually with performance against them;
- openness – information will be given in plain language and advice will be disseminated widely;
- helpfulness – staff will work in the basis that prevention is better than cure;
- complaints procedures – well-publicised and timely complaints procedures will exist;
- proportionality – any action required will be proportionate to the risks; and
- consistency – arrangements will be in place to ensure that different enforcers treat businesses in the same way.

17. The Concordat also sets out procedures, including that

- a business will be told what is good advice and what is a legal requirement;
- as far as possible in the circumstances, there will be discussion before formal action is taken; and
- if action does have to go ahead for urgent reasons, this will be followed by a prompt written explanation of the reasons.

18. The Concordat has similar objectives to the section 5 powers but excludes those elements of section 5 with which enforcers and businesses had difficulty. Enforcers signing up to the Concordat are encouraged to monitor their progress against it. Under section 5, procedures were imposed by Ministers.

19. Announcing the launch of the new policy on 4 March 1998 (House of Commons Hansard, columns 692-94), the Parliamentary Secretary for the Cabinet Office said that where "minded to" procedures had been applied in law, these would be amended as the opportunity arose.

20. By March 2000, the Concordat had been adopted by about half of the local authorities in England and Wales (including all County Councils) and by the vast majority of central government enforcement agencies. In the light of take-up of the Concordat, the Government is seeking only a reserve power.

Provisions in the Bill

21. The Bill would repeal section 5 of DCOA and replace it with a power for Ministers to set out a code of good enforcement practice. This would provide a safeguard if problems were encountered with the voluntary approach. The policy, including the "light-touch" nature of the reserve power, was developed with input from a consultation exercise involving both enforcers and those subject to enforcement.

22. The proposal is designed to provide assurance to business, the voluntary sector and others that the Government would be able to bring pressure to bear on enforcers that failed to apply best practice along the lines of the Concordat. A code made under this power would not be directly binding on enforcers. But businesses found by a court or tribunal to be in breach of a statutory requirement would be able to ask for the enforcer's failure to follow the code to be taken into account in determining the appropriate penalties, award of costs or other action.

23. The power is intended to counter unjustifiably inflexible or over-zealous enforcement. The provisions of the Bill allow a code to be tailored to address the particular enforcement problem that had emerged. Before making an Order the Government would consult publicly on why and how the power should be used. This would explain the underlying circumstances, the enforcement bodies or activities that would be affected and the proposed content of the code. The consultation document would be accompanied by a thorough regulatory impact assessment, setting out the expected benefits to business as well as the impact on enforcers.

THE BILL

24. The clauses of the Bill may be conveniently divided into four main groups:

- Clause 1 sets out the order-making power and the context within which it can be exercised. Clause 2 explains what is meant by the term "burden" and related expressions. Clause 3 sets out the tests which have to be met by proposed orders, and limits the level of criminal penalties which can be imposed by an order. The flow-chart at Annex D details the preliminary checks against vires which a Minister must consider before embarking along

the route of a regulatory reform order.

- The second group of clauses is concerned with the mechanics of order-making, which are only slightly different to the equivalent provisions in DCOA. The flow-charts at Annexes E and F set out the steps involved, from identification of burdensome legislation which could be reformed through to the Parliamentary procedures which an order must undergo. Clause 4 provides that orders shall be made by affirmative resolution, and sets out how subordinate details of matters addressed by orders can be dealt with by negative resolution. Clause 5 sets out the consultation a Minister must undertake prior to laying before Parliament details of his proposed order. Clause 6 gives details of the information the Minister must provide to Parliament alongside the proposed order. Clause 7 governs the disclosure requirements for representations made during consultation on proposed orders. Clause 8 sets out the procedure governing Parliament's scrutiny of draft orders.

- Clauses 9, 10 and 11 make provision for Ministers to set out codes of good practice in relation to enforcement of statutory requirements.

- The final group of clauses is concerned with supplementary matters. Clause 12 deals with repeals and savings. Clause 13 makes consequential amendments to section 6 of DCOA. Clause 14 covers interpretation of terms and clause 15 deals with the short title and territorial extent of the Act.

COMMENTARY ON CLAUSES

Clause 1: Power by order to make provision reforming law which imposes burdens

25. *Subsection (1)* includes the main order-making power, and sets out the context within which it can be exercised. The governing purpose in this subsection constrains the power in a number of respects. It will be helpful to deal with each of these in turn.

"…by order make provision for the purpose of reforming legislation…"

26. This means that orders can only be directed at the reform of existing legislation. They cannot make entirely new provision; there has to be some Act or Acts of Parliament already in existence. So an order could not be used, for example, to remove burdens imposed solely by the common law. Common law elements can only be dealt with within the context of reform of legislation.

27. The reference to reform opens up the order-making power so that it can apply to a whole regulatory regime, addressing a number of different pieces of legislation if necessary. For example, the power could be used to simplify and rationalise the legislation governing fire safety, which is enshrined in approximately 120 Acts of Parliament and a similar number of statutory instruments. Where a burdensome

situation results from a variety of overlapping regimes, perhaps spread over primary legislation and secondary legislation (including different sets of regulations), the order could replace the entire range. The result would be the repeal of the legislation and new provision in what might be known as, for example, the Regulatory Reform (Fire Safety) Order. The confusion created by the variety of different provisions could be removed. However the anchor of the reform must be a piece or pieces of burdensome primary legislation (or a previous deregulation order or regulatory reform order), rather than common law. Where a burdensome situation is caused by the interaction of common law and statute regimes, an order may be able to clarify the situation and consolidate the different regimes (see paragraph 28 below). This may necessarily involve changes to elements of the related common law, although this will be secondary to the substantive reform, which must be anchored in burdensome primary legislation.

28. The term "reform" is given its natural meaning. Section 3(1) of the Law Commissions Act 1965 describes the systematic development and reform of the law as including "the codification of…law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law". In the Bill the term "reform" is intended to have a similar meaning (other than in relation to codification) to that which it has in the Law Commissions Act. The key difference is that the concept in the Law Commissions Act is intended to cover the whole of the law while the Bill is concerned only with burdensome statute law (as detailed below).

"…make provision for the purpose of reforming legislation which has the effect of imposing burdens…"

29. The concept of "burden" is dealt with below at clause 2. Beyond that, the effect of this part of the clause is to preclude any order which is not predicated on the reform of burdensome legislation. So an order could not be used to create a new legal entity, for example for incorporation of limited liability partnerships, as there is no relevant burdensome legislation: the inability to create such an entity is neither a "restriction" in the natural meaning of the word nor does it represent a limitation on the statutory powers of partners. But an order could be used, for example, to remove the duplicatory accounting requirements whereby NHS bodies must submit accounts of charitable funds to the Charity Commission under charity law and also to the National Audit Office under health legislation.

"…make provision for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity"

30. This echo from section 1 of DCOA is a key limitation of the power, as it has the effect of concentrating the power on ongoing activities and rules out any proposal which is not directly concerned with regulating the way in which business, charities, the voluntary sector, individual persons (whether natural or legal) and the wider public sector conduct their affairs. The following examples would therefore be ruled out:

- any proposal aimed at **constitutional change**, such as amending the law on devolution or representation of the people;

- any proposal primarily aimed at making changes to the **judicial system**, such as those addressed by the current Criminal Justice (Mode of Trial) Bill (although lesser changes, such as the setting up of an appeals mechanism, might be made in the context of wider reform of a specific area of law);

- any proposed changes to the structure or organisation of local government, such as setting up directly-elected **mayors** (although change might be made in relation to activities such as waste collection or administration of schools);

- any proposed changes to the **Ombudsmen** procedures, which deal with complaints of maladministration against public bodies.

31. Change in these sorts of areas would be for Parliament to consider as primary legislation. Only proposals which seek to deal with ongoing activities would fall within the vires of the regulatory reform order-making power, for example:

- reform of the legislation governing **gambling**.

- removal of the restriction that **school crossing patrols** can only assist children of school age across the road on their way to school (and not, for example, younger siblings of schoolchildren);

"…make provision for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity, with a view to one or more of the following objects"

32. From the starting point of burdensome legislation, an order may involve any combination of the four objects in *subsection (1)* paragraphs (a) to (d). It is highly likely that every order will take in object (a), since to make an order predicated on reform of burdensome legislation without then seeking to remove or reduce any of those burdens would be very unusual. However there may be circumstances where the order would not obviously remove or reduce a burden. For example, some institutions share responsibility for the up-keep of their premises with local or central government but it is not always clear where the responsibility for the repair of a particular item lies. Determining on which side of the line a particular item falls and consequently who is responsible for it can give rise to complex and bureaucratic arrangements. An order could reform the arrangements by transferring the entire burden to the institutions themselves, provided that their grant to cover such works was increased. This would result in a much simpler system, without need to maintain difficult and costly bureaucratic distinctions.

33. Paragraphs (b) and (c) are concerned with the imposition of burdens. DCOA only allows burdens to be imposed where they are less onerous than the burden being removed, and only on those affected by the burden being removed. Paragraph (b)

allows burdens to be carried over from the legislation under reform, as in DCOA, but only where they are proportionate. Paragraph (c) goes a step further, in allowing an order to increase burdens on those already affected and to impose new burdens on people not previously subject to burdens at all, but again only where they are proportionate. As with the tests in clause 3, the Minister will have to justify his decision about how the order meets it in the document he lays before Parliament under clause 6. For example, in rationalising a licensing system it might not be considered proportionate to require people who did not previously have to have a licence to obtain one. It might be considered more proportionate (and therefore more appropriate) to set up a new system of negative licensing, class (rather than individual) licensing, or perhaps a registration system instead. Whatever the Minister decides, he will have to explain why.

34. Paragraph (d) provides for orders to remove inconsistencies and anomalies in legislation. This object will be particularly relevant when a Minister is using an order to reform a whole regulatory regime, because problems with burdensome regulatory regimes are often due to overlap between different pieces of legislation. This object is also likely to be relevant in the context of proposals from the Law Commission on reform of the law. The Law Commission's programme of work results in the production of Bills ready for introduction to Parliament. However due to the pressure on the legislative programme, these proposals might not reach enactment for several years. The provision at paragraph (d) will assist in enabling Law Commission proposals which fit the other criteria for orders under the Bill to be implemented by order.

35. *Subsection (2)(a)* provides that an order may have as its subject any Act of Parliament which is more than two years old. This is a change from section 1(5)(c) of DCOA, which limits application of the power to legislation passed before the end of the 1993-4 Parliamentary Session. The term "Act" is defined in Schedule 1 to the Interpretation Act 1978 (as amended by Schedule 8 to the Scotland Act 1998) as meaning an Act of Parliament. Northern Ireland legislation, therefore, is excluded (although consequential amendments to Northern Ireland legislation may be made). Northern Ireland has in the past made its own provision to mirror deregulation orders.

36. The text in parentheses in subsection (2)(a) makes clear that the legislation addressed by the order need not have been commenced. Instances where an order would be used to address uncommenced legislation are not expected to be frequent. However, it would allow the power to address cases such as the Sexual Offences (Protected Material) Act 1997, which creates a statutory scheme for supervising the defendant's access to victim material in sexual offences cases (with the intention that this material cannot be circulated as a form of pornography). The Act, if commenced, would make it an offence for the defendant to have unsupervised access to the material or for any other person to whom the material is given to breach the requirements of the scheme. It appears, however, that (because of an oversight when preparing the legislation) there are significant problems with even the defence legal team viewing the material. This makes the Act unworkable, and so it has never been

commenced. It is a burden on the defence legal team and others not to be able to handle the material in the normal way. It is also a burden on the alleged victim of the sexual offence that she is unable to benefit from the protections intended by Parliament when the legislation was passed. Although cases of uncommenced legislation imposing burdens arise infrequently, the burdens can be significant and the provision in subsection (2)(a) will allow them to be addressed by regulatory reform order.

37. *Subsection (2)(b)* makes clear that deregulation orders made under section 1 of DCOA and regulatory reform orders, if they fall within the purpose of clause 1(1), may themselves be the subject of orders. DCOA and the Bill itself, once it becomes an Act, will be excluded because neither imposes burdens affecting persons in the carrying on of an activity. In any case, as DCOA will only be preserved for devolved matters in Scotland (cf clause 12(1)(b)), it would not be a candidate for regulatory reform orders (which will be made at Westminster) as to do so would be at odds with the devolution settlement.

38. The remainder of subsection (2) sets out the arrangements with regard to legislation that has been devolved to Scotland. In order to reflect the devolution settlement, the power does not extend to legislation which is within the devolved competence of the Scottish Parliament. But as explained below, clause 12(1)(b) preserves DCOA for use by Scottish Ministers.

39. The effect of *subsection (3)* is that the power cannot be used to address any legislation which has been amended in the last two years, other than consequentially or incidentally. However such legislation can be re-enacted without substantive change as part of a wider reform.

40. *Subsection (4)* reflects the Welsh devolution settlement. It provides that the consent of the National Assembly for Wales would be required for any order that sought to remove or modify any function of the Assembly. The order-making power itself is not available to the Welsh Assembly.

41. *Subsection (5)* makes clear that an order may amend or repeal any enactment in pursuance of reforming the burdensome legislation referred to in subsection (1). Any enactments that are amended or repealed are not subject to the two-year limitation. Paragraph (b) makes clear that burdens may be imposed on Ministers (cf clause 2(1), which excludes from the definition of "burden" any burden which affects only Ministers or government departments.) The effect of the two subsections is that while a burden which falls solely on Ministers or departments may not be removed by regulatory reform order, such a burden may be imposed. Under section 43(1) of the Government of Wales Act 1998, the same applies to the National Assembly for Wales. Paragraph (c) provides a general power to make incidental, consequential, transitional or supplementary provision in standard terms. This could include amendment or revocation of secondary legislation, although this will normally be

done by amending or remaking the instrument concerned under the existing power.

Clause 2: Meaning of "burden" and related expressions

42. This clause is key to the understanding of what the order-making power is designed to achieve. *Subsection (1)(a)*, which reflects section 1(5)(b) of DCOA, is intended to ensure that a "burden" includes:

- restrictions on the carrying on of particular activities. This allows the order-making power to deal with cases where there is an explicit ban on something being done (a "thou shalt not" provision such as was addressed in the Deregulation (Long Pull) Order (SI no. 1996/1339) as detailed at paragraph 12 of Annex A below). It also covers cases where there is a restriction in the sense that the legislation contemplates a possibility and then sets a limit (referred to as the "implicit restriction" cases) (for example legislation which allowed building societies to borrow non-retail funds and deposits up to a maximum of 40% of the society's share and deposit liabilities – increased to 50% by the Deregulation (Building Societies) Order (SI no. 1995/3233) as detailed at paragraph 2 of Annex A below).

- requirements, including procedural requirements. For example, the requirement for purchasers of corn to submit weekly returns to central government, which was addressed by the Deregulation (Corn Returns Act 1882) Order (SI no. 1996/848) (paragraph 6 of Annex A).

- conditions, for example, the 48-hour waiting period before a person can become a member of a gaming club, which was reduced to 24 hours by the Deregulation (Casinos) Order (SI no. 1997/950) (paragraph 26 of Annex A). "Condition" catches a different category of measure from "requirement" because it refers to procedures which affect people only if they wish to achieve a certain result (such as becoming a member of a gaming club) rather than a requirement which must be met in all cases;

- sanctions (whether criminal or otherwise) for failure to observe a restriction or to comply with a requirement or condition. This provision makes clear that a sanction alone may be a burden for the purpose of this Bill, even if the requirement, restriction of condition to which it relates is not being modified by the order. An order could thus, for example, leave a restriction unchanged but impose a civil rather than a criminal penalty. Equally, but in practice likely to be exceptionally, an order could replace a civil penalty with a criminal one provided the tests were met. Criminal sanctions can in practice be less burdensome than civil sanctions, particularly where civil liability then does not attach. In addition, the higher burden of proof needed to justify the imposition of criminal sanctions may give greater protection to the accused.

43. Restrictions, requirements and conditions in legislation can make it burdensome. However, it is important to understand that even legislation which

includes restrictions, requirements or conditions may be enabling in that it allows people to do things but at the same time sets the boundaries within which they can do it. In such cases if the legislation were not there at all, they would not be able to do it at all. The legislation only becomes burdensome when the boundaries are not wide enough, and perceptions of that are likely to change over time and with circumstance.

44. DCOA includes in the definition of "restrictions, requirements and conditions" those requiring the payment of fees. Subsection (1)(a) extends this to cover those which prevent the incurring of expenditure.

45. *Subsection (1)(b)* expressly provides that in addition "burden" includes any limit on the statutory powers of any person. This means that an order under this provision may extend the statutory powers of a person, hence enabling them to do something which they could not otherwise do because there is no statutory provision for them to do it. This aspect of the power is aimed at dealing with cases where there is clearly a limit on what someone can do but there is no "restriction" in the sense it is now used in subsection (1)(a), as described above. Early in the life of DCOA, a number of deregulation orders were passed which in practice empowered people to do things they could not otherwise do. These orders drew on the range of statutory concepts which now appear in subsection (1)(a), sometimes in combination.

Example 1

The very first deregulation order, the Deregulation (Greyhound Racing) Order (SI no. 1995/3231), made new provision for inter-track totalisator betting. There was no explicit restriction in statute prior to the order being made (i.e. nothing which expressly prohibited inter-track totalisator betting on greyhound races), but there was an implicit restriction in that provision was made for inter-track totalisator betting on horse races but not on greyhound races. The order set out that inter-track totalisator betting on greyhound races was permissible, and set out a new regulatory regime governing it.

Example 2

The Deregulation (Bills of Exchange) Order (SI no. 1996/2993) made new provision empowering bankers to present cheques for payment by notification of their essential features by electronic means, rather than by their physical presentment. Here there was clearly no explicit or implicit restriction on electronic notification in the relevant legislation; electronic transmission was an alien concept when the Bills of Exchange Act was passed in 1882 and the idea that there was any possibility other than physical presentment was simply not contemplated. The burden of the requirement for physical presentment and the inability to take full advantage of advances in technology was removed. New provision was made to enable the electronic system (which was already operating alongside physical presentment) to take the place of

physical presentment for legal purposes.

46. However there can be difficulties unless there is express provision for people to be empowered to do things.

Example 3

The Trustee Investments Act 1961 provides default powers that, inter alia, enable trustees to invest in some things but not others. The proposed Deregulation (Trustee Investments) Order, laid in February 1997, sought to remove the restriction on what trustees could invest in, thus enabling them to invest in whatever they chose. An argument could be mounted that legally the 1961 Act was in fact a liberating measure, set against the common law and statutory history of gradual easing of investment powers. If the 1961 Act were not in existence, trustees without explicit or sufficiently wide powers of investment in their trust documents would be able to invest in even fewer things. So it could be argued that the 1961 Act legally defined rather than restricted trustees' default powers. But in reporting on this proposed deregulation order the House of Lords Delegated Powers and Deregulation Committee, which scrutinises deregulation orders, was satisfied that in present day circumstances the Act constituted a restriction and therefore a burden. However the proposal was not pursued following cautious advice that there was a risk that the order could be held to be ultra vires on the basis of a narrow view of "restriction". If widows and orphans had lost as a result of trustees reasonably investing on the basis of the order, either the trustees or perhaps the Government could have been liable.

The risks in this case outweighed the benefits of early change which would have resulted from a deregulation order. The change is being taken forward as part of the Trustee Bill, which is currently before Parliament.

Example 4

The governors of maintained schools, as creatures of statute, only have power to do things for educational purposes. Their powers are limited to those set out in legislation. There is power to enable them to let out their premises in the evenings for activities such as art classes for adults, and such arrangements are common. However, what they do is simply to make their facilities available, often for a fee. They are not permitted to run activities themselves, unless the activity is related to or incidental to providing education, and so the actual provision is not by the school but by someone else.

The Government would like to use an order under the new power to confer on governing bodies power to provide pure childcare. There is no specific statutory restriction on schools offering childcare. But there is no provision for them to do it either, as set out above. This lack of provision is a limit on what they can do

and a restriction in the natural meaning of the word. An order to effect this change would rely on clause 2(1)(b).

47. The express reference to "any limit" in subsection (1)(b) is designed to provide a straightforward and explicit basis for orders which empower people to do things they are not currently able to do, covering cases in the future of a kind such as trustee investments and after-school childcare.

48. The text in parentheses in subsection (1)(b) makes clear that an order which enables something to be done may authorise expenditure. This would allow, for example, the statutory definition of physical training and recreation to be amended to include chess and other "mind games" so that, among other things, they would be allowed access to the Lottery Sports Fund in England.

49. The remainder of subsection (1) excludes from the definition of "burden" any burden that only affects a Minister of the Crown or government department. This means that, while local authorities, schools, hospitals, non-departmental public bodies and other public sector bodies could be the sole beneficiaries of an order, Ministers and government departments cannot be the sole beneficiaries; someone else must also benefit.

50. *Subsection (2)* makes clear that any reference to creating, imposing, removing or reducing burdens applies not only to free-standing burdens but also to situations where the law authorises or requires a burden to be imposed. This will allow orders to deal with cases where the primary legislation itself cannot be said to impose a burden because all it does is confer a power, but where what can be done under the power is burdensome.

Clause 3: Limitations on the order-making power

51. This clause constrains the order-making power by imposing three tests. The first test, in s*ubsection (1)(a)*, demands that the Minister making the order must be of the opinion that it does not remove any necessary protection. This test is reproduced from section 1(1)(b) of DCOA, and has been applied by the Deregulation Committees widely and robustly. The second test, in *subsection (1)(b)*, demands that the Minister making the order must be of the opinion that it will not prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise. This "reasonable expectations" test is new to the Regulatory Reform Bill but is familiar in terms of case law on the European Convention on Human Rights. It is an additional safeguard, intended to form a stiff test for potential orders, in particular those which would remove or reduce burdens on the public sector. Ministers bringing forward orders, as well as the Deregulation Committees, will give careful consideration to what constitutes "reasonable expectation".

52. *Subsection (2)* forms the second test governing the imposition of new burdens (the first, the requirement for proportionality, being in clause 1(1)). It states that the Minister must be of the opinion that the provisions of the order, taken as a whole,

strike a fair balance between the public interest and the interests of the persons affected by the burden being created. To return to the illustrative example used in paragraph 33 above, the Minister may feel that there is a need to maintain or improve the protection of consumers afforded by a licensing regime at the same time as reducing the overall burden of the regime. This might be achieved by imposing a less onerous licensing requirement on a greater number of licensees. Again, whatever the Minister decides, he must explain his reasoning in the document he lays before Parliament under clause 6.

53. The further limitations on the power included in this clause reflect provision made in DCOA. *Subsection (3)* sets the maximum penalties that can be imposed for a new criminal offence created by an order under the power. The maximum penalty can be higher when the offender is convicted on indictment (in the Crown Court in England or Wales, and in the High Court or the Sheriff's Court in Scotland) than when he is convicted summarily (in a Magistrate's Court in England and Wales and in the Sheriff's Court in Scotland). The maximum penalty is two years' imprisonment and/or an unlimited fine on indictment or six months' imprisonment and/or a fine of £5,000 on summary conviction.

54. Some offences are triable either summarily or on indictment, and *subsection (4)* ensures that the relevant limits in subsection (3) apply to these cases.

55. *Subsection (5)* limits the enforcement powers which can be conferred by a regulatory reform order. Powers of forcible entry, search and seizure, and powers to compel people to give evidence, may only be conferred in similar circumstances to provision made for that purpose in the legislation being reformed.

Clause 4: Statutory instrument procedure

56. *Subsection (1)* requires that orders be made by statutory instrument. *Subsection (2)* sets out the standard provision for the draft affirmative order procedure.

57. *Subsections (3)-(7)* provide for minor detailed provisions of orders to be amended by negative resolution procedure. The wide scope of DCOA enabled matters to be prescribed by a further order (as, for example, with the Deregulation (Corn Returns Act 1882) Order (SI no. 1996/848) where minor detail was set out in the Corn Returns Regulations (SI no. 1997/1873)). However this power was very limited in practice, because of the need to ensure that any subordinate provision maintained necessary protection. The new approach in this clause allows Parliament to see what is proposed to be done but also enables it to be amended subsequently by statutory instrument. It is envisaged that subordinate provisions would usually be included in schedules to the main part of the regulatory reform order, in the same way as technical detail is omitted from Articles in European Community legislation, but rather set out in Annexes. The Committees would be able to insist that the main principles were set out in the main part of the order, which would be unamendable (except by a further full regulatory reform order). It would therefore not be possible

to have a "skeleton" order. The kind of details that would be dealt with by a subordinate provisions order (which could have been dealt with under DCOA) would be matters of administrative arrangement such as the precise detail of an application form, the number of copies of the form required and any accompanying fee, etc. In addition, a subordinate provisions order might cover the more technical details of the legislation, such as procedures needed to give effect to principles set out in the main part of the order. Such details may change from time to time. Without provision for a subordinate provisions order, the only way to change the details would be to undergo the full consultation and scrutiny procedure, which might be viewed as an inappropriate use of Parliamentary time and would be likely to lead to delay. *Subsection (5)* specifies the role of the National Assembly for Wales in making subordinate provisions orders relating to Wales. The purpose is to reflect the devolution settlement.

Clause 5: Preliminary consultation

58. This clause sets out the first steps in the procedure for making an order, and is based on section 3 of DCOA, with some additions to take account of the widened power. *Subsection (1)* lists those parties who must be consulted by a Minister before he takes his proposals any further. Under paragraph (c) the Minister is required to consult the Law Commission and/or Scottish Law Commission "in such cases as he considers appropriate". The circumstances in which this might be the case would be when one of the Commissions had relevant experience concerning the subject-area covered by the order, perhaps because it was within the current or recent programme of work. Under paragraph (d) the Minister is also required to consult the National Assembly for Wales when provision made by the order would extend to (i.e. apply within) Wales.

59. If the Minister varies his proposals as a result of the consultation he has undertaken, s*ubsection (3)* requires him to consult again as appropriate. The subsection makes clear that the Minister does not have to repeat the whole consultation exercise; the additional consultation is only in respect of those elements of his proposal that he has changed and might involve only those consultees affected by the change.

60. *Subsection (4)* allows any proposal that has undergone the consultation process before the Bill is passed to be carried over, without having to repeat the consultation.

Clause 6: Document to be laid before Parliament

61. As detailed in paragraph 7 above in respect of deregulation orders, the next step following the required consultation is for the Minister to lay his proposals before Parliament. *Subsection (1)* sets out how this is to be done. The Minister has to lay a document in the form of a draft order, setting out in detail all the relevant information about his proposals, as specified in *subsection (2)*.

62. This information enables the Committees scrutinising the proposal to take into

account all the relevant factors. Once laid before Parliament, this document is in the public domain.

63. Proposed regulatory reform orders will also be accompanied by a statement of the Minister's views on its compatibility with the Convention rights. This is in line with the commitment made by Lord Williams of Mostyn (House of Lords Hansard 2 November 1999, col. 738) that Ministers would always inform the House whether they are satisfied that secondary legislation subject to the affirmative procedure is compatible.

Clause 7: Representations made in confidence or containing damaging information

64. This clause sets out what should be done when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed. The reason for allowing representations to be made in confidence is that, for example, an elderly person living near a public house may want to give details of the disturbance caused if there is a proposal to extend the opening hours (as, for example, with the Deregulation (Millennium Licensing) Order 1999 (SI no. 1999/2137) (detailed at paragraph 46 of Annex A), but he or she may be justifiably concerned about reprisals. Similarly, where there is a proposal to relax a requirement, someone might want to show how the existing control has enabled a major fraud to be detected. Or there may be commercially confidential information either as to the benefits or adverse effects to be expected as a result of a proposed order.

65. *Subsection (2)* makes clear that the fact that the respondent has made representations should always be disclosed. That is, no respondent would be able to exclude his name from the list of respondents that is presented to Parliament under clause 6(2)(k). However the Minister should not disclose the content of that representation without the express consent of the respondent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve the anonymity of the respondent and any third party involved.

66. *Subsection (3)* governs the requirements for disclosure where a respondent has given information about a third party which the Minister believes may be damaging to the interests of that third party. In such cases the respondent may not have requested confidentiality. The Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure.

67. However there may be cases where one or both of the Deregulation Committees wishes to have access to the representations as originally submitted. *Subsection (4)* provides for this. This provision acts as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders. The fact that responses may be released to the Committees in this way will be

made clear in the consultation document accompanying any proposed order.

Clause 8: Parliamentary consideration of proposals

68. This clause mirrors section 4 of DCOA. *Subsections (1)* and (*2)* provide that Parliament shall have 60 days to consider any proposal laid in the form of a draft order. Only after the 60 days have passed may the Minister proceed to lay a draft order. As set out in Parliamentary Standing Orders, this 60 days is the time during which the two Deregulation Committees scrutinise the proposed order and produce their reports.

69. *Subsection (3)* excludes from the calculation of the 60 day period any time when Parliament is not sitting for more than four days. The effect is that consideration of proposed orders can be carried over from one Session to the next, and from one Parliament to the next.

70. *Subsections (4)* and (*5)* are concerned with the next stage in the procedure, when the Minister lays the draft order proper. Subsection (4) requires him to take account of any representations made during the 60 day period and in particular the reports from the Deregulation Committees. Subsection (5) requires him to lay a statement alongside the draft order, giving details of any such representations, resolutions or reports, and to highlight any changes he has made to the proposed order as a result.

71. *Subsection (6)* makes clear that the provision in clause 7 for representations made in confidence or containing damaging information applies to any representations made during the 60 days as well as to those made during the preliminary consultation stage. The exception is the provision for the Deregulation Committees to request access to particular representations, which only applies at the earlier stage.

Clause 9: Codes relating to enforcement of regulatory requirements

72. *Subsection (1)* confers a power to make codes of practice relating to enforcement of regulatory requirements. Subsection (1)(a) outlines the first element of the context within which the power is intended to operate: the identification of statutory requirements that are enforced. Use of the terms "restriction", "requirement" and "condition" is explained at paragraph 42 above.

73. Subsection (1)(b) outlines the second precondition that must be met before the power can be exercised. In forming its view that the enforcement officers' practice "ought to be improved", the appropriate authority (as defined at subsection (5)) might take into account factors such as the take-up and compliance with the Enforcement Concordat and the extent and merit of business dissatisfaction with current enforcement practice**.** It will be a matter of judgement by the appropriate authority whether the current practice "ought to be improved". That view will be tested by consultation, which is provided for in clause 10.

74. The remainder of subsection (1) provides that, if these two preconditions are met, the appropriate authority may issue a code of practice setting out recommended enforcement practice. A code of practice would be likely to be based on, but not identical to, the existing Enforcement Concordat.

75. *Subsection (2)* sets out two different but not exclusive approaches for framing a code. The aim is to allow a code to be tailored to the enforcement problems that are driving Ministers to exercise the power. Subsection (2)(a) provides that a code could apply to all enforcement officers enforcing a particular legal requirement. For example, it could apply to any enforcement officer enforcing the law on health and safety at work. If this approach were to be followed, the code would include a list of the legislation to which it applied. The alternative approach, at subsection (2)(b), is for a code to apply more specifically to enforcers of a particular description, or to enforcers in specified areas. For example, a code could be applied to all trading standards officers or to all environmental health officers, or to all such officers in a particular geographical area.

76. *Subsection (3)* deals with the effect of any code. The first stage, at subsection (3)(a), is for a court or tribunal to have found that a defendant is guilty of a breach of a restriction, requirement or condition. The second stage is to determine whether there is a relevant code of practice (as detailed at subsection (3)(b)). If so, the court or tribunal may form a view whether enforcement officers failed to comply with the code (as detailed at subsection (3)(c)). Once these three steps have been completed, the court or tribunal may take into account that failure in deciding how to deal with the regulatory breach. The court would not take compliance with the code into account in determining whether or not a regulatory breach had occurred. The way in which the court or tribunal may take non-compliance with the code into account might be when considering the appropriate penalty for an offence or in considering awards of costs. This approach means that the code is not directly binding on enforcement bodies and there is no direct penalty on the enforcement authority for non-compliance.

77. The effect of *subsection (4)* is to limit application of any code in Scotland to those matters that have been reserved to the UK Parliament.

78. *Subsection (5)* defines several terms. The "appropriate authority" exercising the power would normally be a UK Minister at Westminster (expected to be the Minister for the Cabinet Office). However, in the case of a code that relates to an enforcement function of the National Assembly of Wales, such as the control of animal health and welfare in Wales, the Assembly is given the power to set out a code. A UK Minister at Westminster could also exercise the power in respect of these functions but only with the consent of the Assembly. This provides a mechanism by which a single code embracing enforcement in both England and Wales could be applied if considered appropriate. For example, one code could apply to all farm inspectors in England and Wales, assuming that there is consensus between the UK Government and the Assembly.

79. The definition of "enactment" does not affect the meaning of this term in clauses 1-8. Its effect is that the subject of any code may be subordinate legislation as well as restrictions, requirements and conditions imposed directly by primary legislation.

80. The effect of the definition of "enforcement officer" is the same as that in section 5(6) of DCOA.

Clause 10:Making of codes of practice by designated Minister

81. Clause 10 sets out an established procedure for making or revising codes of practice. Similar procedures appear in section 9B of the Fire Precautions Act 1971, section 38 of the Road Traffic Act 1988 and section 85 of the School Standards and Frameworks Act 1998. A feature of the procedure is that the provisions of the relevant code of practice do not themselves become provisions of an order or statutory instrument, but the code is brought into force by a statutory instrument as set out in *subsection (5)*.

82. *Subsections (1) and (2)* require that a draft code be produced and that various parties with an interest are consulted. This includes the National Assembly for Wales where the draft relates to Wales.

83. *Subsections (3) to (8)* provide for Parliamentary scrutiny of any proposed code. Subsection (4) makes provision for Parliament to veto any proposed code if it sees fit to do so, but as subsection (6) makes clear, this is without prejudice to the Minister's ability to take up any proposed code and replace it with an amended draft for further Parliamentary scrutiny.

Clause 11: Making of codes of practice by National Assembly for Wales

84. Clause 11 is the Welsh counterpart of clause 10. It requires the National Assembly for Wales to consult on any draft code before bringing the code into force under the Assembly's own statutory instrument. The procedure appropriate for laying an order giving effect to a code of practice proposed by the National Assembly is a matter for the Assembly to determine.

Clause 12: Repeals and savings

85. *Subsection (1)* repeals sections 1-5 of, and Schedule 1 to, DCOA except so far as they relate to the making of orders by Ministers in the Scottish Parliament. The deregulation order-making power was devolved under the Scotland Act 1998, and the procedure amended by Article 117 of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (SI no. 1999/1820). It is therefore available for use by Scottish Ministers as regards devolved matters as they see fit. The regulatory reform order-making power will not be available to Scottish Ministers. In line with the devolution settlement, it will be possible for UK Ministers to make orders that cover reserved matters in Scotland, but they will not be able to make orders covering devolved matters. If the legislation under reform was passed before the Scotland Act 1998, covers Scotland as well as England and Wales and applies to a devolved matter,

a UK Minister may:

- act independently from the Scottish Parliament, repealing the legislation so far as it relates to England and Wales and replacing the provisions with a regulatory reform order. This means that the old primary legislation would still apply in Scotland; or

- work with the Scottish Parliament to ensure that the changes made by the regulatory reform order were mirrored in Scotland and the old legislation repealed in its entirety. Unless and until the Scottish Parliament creates its own regulatory reform Order-making power, any changes which are outwith the DCOA vires would have to be made by Scottish primary legislation.

86. Similar arrangements apply in relation to the section 5 powers.

87. If, on the day the Bill receives Royal Assent, a proposed deregulation order has begun its 60 day Parliamentary scrutiny, but has not reached the stage when the draft order is formally laid, then *subsection (2)* allows it to be carried over and to complete its passage as a deregulation order notwithstanding the repeal of DCOA.

88. *Subsection (4)* makes clear that any deregulation orders passed under DCOA are not affected by the repeal of DCOA.

Clause 13: Consequential amendments

89. Section 6 of DCOA (which enables the Secretary a State to prescribe model provisions with respect to appeals) contains defined terms which refer to section 5 of the Act. Consequential amendments are needed to ensure that section 6 remains intelligible after the repeal of section 5. There is no need for this clause to extend to Scotland, as the repeal does not extend to Scotland, and *subsection (2)* makes this clear.

Clause 14: Interpretation

90. The effect of defining Wales as it was defined in the Government of Wales Act 1998 is that the sea around Wales is included.

Clause 15: Short title and extent

91. *Subsection (2)* makes clear that the Bill extends to Northern Ireland (cf paragraph 35 above) *Subsection (3)* makes clear that regulatory reform orders may have the same territorial extent as the legislation being reformed.

FINANCIAL EFFECTS OF THE BILL

92. The Bill sets out the framework for regulatory reform orders and enforcement codes i.e. the circumstances under which they can be brought forward and the limitations to the power. As an enabling Act, it will itself have no financial effect.

Any financial effects will flow over time from the individual orders that are brought forward by Ministers under the Act or from the impact of any enforcement codes. The financial effect of each regulatory reform order will be detailed in the document presented to Parliament alongside the draft, as required under clause 6(2)(f). Since it is expected that most regulatory reform orders will remove or reduce burdens, it is envisaged that regulatory reform orders will, in general, have a net positive financial effect. The financial effect of any enforcement codes will be detailed in the regulatory impact assessment relating to any proposal to issue a code.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

93. As with financial effects, the Bill itself will have no impact on public service manpower, and any effects will flow from the orders and any codes brought forward under the power. The effect of each order and code on public service manpower will be included in both the regulatory impact assessment (detailed below) and, for regulatory reform orders, the document presented to Parliament under clause 6(2).

SUMMARY OF THE REGULATORY APPRAISAL

94. The Cabinet Office has produced a regulatory impact assessment for the Bill, which has been placed in the Library of each House. Copies are also available from the Cabinet Office on 020 7270 5469 or plewis@cabinet-office.x.gsi.gov.uk. In sum, as with financial effects and effects on public service manpower, the regulatory impact of the Bill itself is negligible because it is only an enabling power. The regulatory impact on business, charities, the voluntary sector, individuals or the public sector will flow from orders and any codes brought forward under the new Act. Each proposed regulatory reform order and any enforcement code brought forward will be accompanied by its own regulatory impact assessment. As orders are primarily aimed at lifting regulatory burdens, the net effect in each case is expected to be positive. Similarly, the provisions on the making of enforcement codes are intended to be for the benefit of business and so the result would be expected to be beneficial to business.

COMMENCEMENT

95. The provisions of the Bill will come into effect on Royal Assent.

EUROPEAN CONVENTION ON HUMAN RIGHTS

96. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the Bill with the Convention rights (as defined in section 1 of that

Act). The provisions of the draft Bill are regarded as compatible with the Convention rights and the necessary statement to this effect would be made at the appropriate time.

ANNEX A: LIST OF DEREGULATION ORDERS TO DATE

1. The Deregulation (Greyhound Racing) Order 1995 (SI no. 1995/3231) permitted inter-track betting for greyhound racing. Estimated to increase the greyhound industry's gross income by £2-3 million a year.

2. The Deregulation (Building Societies) Order 1995 (SI no. 1995/3233) contained a number of measures, including increasing to 50% the percentage limit on societies' non-retail funds. Estimated to save the industry £400,000 a year for each point the wholesale interest rate is below the retail interest rate.

3. The Deregulation (Fair Trading Act 1973) (Amendment) (Merger Reference Time Limits) Order 1996 (SI no. 1996/345) shortened deadlines for referring mergers to the Director General of Fair Trading.

4. The Deregulation (Restrictive Trade Practices Act 1976) (Amendment) (Variation of Exempt Agreements) Order 1996 (SI no. 1996/346) removed the requirement for advance clearance by the Director General of Fair Trading of variations to certain agreements. Estimated to save industry £100,000 a year.

5. The Deregulation (Restrictive Trade Practices Act 1976) (Amendment) (Time Limits) Order 1996 (SI no. 1996/347) simplified time limits for notification of agreements to the Director General of Fair Trading.

6. The Deregulation (Corn Returns Act 1882) Order 1996 (SI no. 1996/848) allowed exemptions to the requirement for purchasers of corn to make weekly returns. Estimated to save the industry £100,000 a year.

7. The Deregulation (Length of School Day) Order 1996 (SI no. 1996/951) removed restrictions on the procedure for changing the length of the school day.

8. The Deregulation (Special Hours Certificates) Order 1996 (SI no. 1996/977) introduced provisional special hours licensing certificates.

9. The Deregulation (Friendly Societies Act 1992) Order 1996 (SI no. 1996/1188) contained a number of measures, including removing some regulatory and accounting requirements for friendly societies.

10. The Deregulation (Credit Unions) Order 1996 (SI no. 1996/1189) contained a number of measures, including extending the maximum amount that members of credit unions can borrow and hold in shares.

11. The Deregulation (Salmon Fisheries (Scotland) Act 1868) Order 1996 (SI no. 1996/1211(S.122)) permitted the sale of farmed salmon roe. Estimated to give the

Scottish salmon industry access to markets worth £12 million a year.

12. The Deregulation (Long Pull) Order 1996 (SI no. 1996/1339) abolished the "long pull" offence, which prohibited publicans from serving more alcohol than requested.

13. The Deregulation (Gaming Machines and Betting Office Facilities) Order 1996 (SI no. 1996/1359) contained a number of measures, including permitting jackpot machines to give all-cash prizes (rather than just tokens) and permitting a greater number of gaming machines in casinos and bingo clubs. Estimated to save the industry £7 million a year through reduced fraud and administration.

14. The Deregulation (Resolutions of Private Companies) Order 1996 (SI no. 1996/1471) removed the requirement for private companies to consult auditors in written resolution procedures.

15. The Deregulation (Parking Equipment) Order 1996 (SI no. 1996/1553) abolished the requirement for type approval of parking control equipment. Estimated to save central and local government £70,000 a year in administration costs.

16. The Deregulation (Gun Barrel Proving) Order 1996 (SI no. 1996/1576) allowed Proof Houses (which prove and mark civilian small arms) to set their own prices.

17. The Deregulation (Motor Vehicles Tests) Order 1996 (SI no. 1996/1700) allowed a car's first MOT certificate to run for 13 months. Estimated to save the public over £3 million a year.

18. The Deregulation (Industrial and Provident Societies) Order 1996 (SI no. 1996/1738) contained a number of measures, including aligning the audit requirement thresholds for industrial and provident societies with those of private companies. Estimated to save £3 million a year.

19. The Deregulation (Wireless Telegraphy) Order 1996 (SI no. 1996/1864) abolished the requirements for TV dealers to hold TV licences and to register with the BBC. Estimated to save TV dealers £10,000 a year.

20. The Deregulation (Building) (Initial Notices and Final Certificates) Order 1996 (SI no. 1996/1905) reduced paperwork requirements and restrictions for approved building inspectors. Estimated to reduce approved building inspectors' costs by up to £61,000 a year.

21. The Deregulation (Insurance Companies Act 1982) Order 1996 (SI no. 1996/2102) contained a number of measures, including abolishing the requirement for production of five yearly statements of business and permitting annual returns to be made electronically. All measures taken together estimated to save the

industry £6 million every five years.

22. The Deregulation (Slaughterhouses Act 1974 and Slaughter of Animals (Scotland) Act 1980) Order 1996 (SI no. 1996/2235) contained a number of measures, including removing duplicatory requirements for the licensing of slaughterhouses. Estimated to save the industry £100,000 a year.

23. The Deregulation (Still-Birth and Death Registration) Order 1996 (SI no. 1996/2395) permitted notification of death to any registrar (not just the registrar in the locality where the death occurred). Estimated to produce few monetary savings but to significantly reduce the emotional burden.

24. The Deregulation (Bills of Exchange) Order 1996 (SI no. 1996/2993) contained a number of measures including permitting the electronic presentation of cheques. Estimated to save the banking industry £30 million a year.

25. The Deregulation (Rag Flock and other Filling Materials Act 1951) (Repeal) Order 1996 (SI no. 1996/3097) repealed the 1951 Act. Estimated to save the upholstering industry £8,000 a year in compliance costs.

26. The Deregulation (Casinos) Order 1997 (SI no. 1997/950) reduced the required time lapse between a new member of a casino club joining the club and being permitted to participate in gaming and allowed special hours certificates to be issued for casinos.

27. The Deregulation (Employment in Bars) Order 1997 (SI no. 1997/957) permitted people aged under 18 on approved apprenticeship schemes to serve in bars.

28. The Deregulation (Gaming on Sunday in Scotland) Order 1997 (SI no. 1997/941 (S.83)) brought Sunday opening hours for bingo clubs and casinos in Scotland into line with those in England & Wales.

29. The Deregulation (Betting Licensing) Order 1997 (SI no. 1997/947) extended the validity of betting office licences. Estimated to save the industry £450,000 a year.

30. The Deregulation (Validity of Civil Preliminaries to Marriage) Order 1997 (SI no. 1997/986) allowed bookings for weddings at registry offices to be made up to twelve months in advance instead of only three.

31. The Deregulation (Occasional Permissions) Order 1997 (SI no. 1997/1133) increased from four to twelve the number of occasional permissions to sell alcohol available each year to non-profit making organisations.

32. The Deregulation (Provision of School Action Plans) Order 1997 (SI no. 1997/1142) permitted failing schools to issue a summary of the statement of its

proposed action to all parents, rather than issuing the full statement.

33. The Deregulation (Football Pools) Order 1997 (SI no. 1997/1073) removed the restriction on pools betting on midweek football matches.

34. The Deregulation (Betting and Bingo Advertising etc.) Order 1997 (SI no. 1997/1074) removed some advertising restrictions on bingo clubs.

35. The Deregulation (Casinos and Bingo Clubs: Debit Cards) Order 1997 (SI no. 1997/1075) allowed debit cards to be used in casinos and bingo clubs.

36. The Deregulation (Non-Fossil Fuel) Order 1997 (SI no. 1997/1185) allowed suppliers of electricity other than that which is connected to the national grid to qualify for the Fossil Fuel Levy.

37. The Deregulation (Public Health Acts Amendment Act 1907) Order 1997 (SI no. 1997/1187) removed duplicatory requirements for licensing of pleasure boats.

38. The Deregulation (Licence Transfers) Order 1998 (SI no. 1998/114) streamlined licence transfer procedures.

39. The Deregulation (Deduction from Pay of Union Subscriptions) Order 1998 (SI no. 1998/1529), also known as the Check Off Order, removed the need for 3-yearly re-authorisation of deduction of trade union subscriptions from pay.

40. The Deregulation (Methylated Spirits Sale By Retail) (Scotland) Order 1998 (SI no. 1998/1602 (S.87)) removed requirements imposed on retailers selling methylated spirits in Scotland.

41. The Deregulation (Exchangeable Driving Licences) Order 1998 (SI no. 1998/1917) recognised some non-UK driving licences as valid for the purposes of driving in the UK.

42. The Deregulation (Taxis and Private Hire Vehicles) Order 1998 (SI no. 1998/1946) permitted holders of Northern Ireland driving licences to be granted a licence to drive a private hire vehicle or taxi in England (excluding London) and Wales, putting them on an equal footing with holders of Great Britain and European driving licences.

43. The Deregulation (Weights and Measures) Order 1999 (SI no. 1999/503) allowed self verification of weighing and measuring equipment by manufacturers, installers and repairers.

44. The Deregulation (Pipe-lines) Order 1999 (SI no. 1999/742) removed the need for consent of the Secretary of State for the Environment, Transport and the Regions

for certain matters relating to the construction of pipe-lines.

45. The Deregulation (Casinos) Order 1999 (SI no. 1999/2136) reduced further the required time lapse between a new member of a casino club joining the club and being permitted to participate in gaming (previously addressed by the Deregulation (Casinos) Order 1997 (SI no. 1997/950)).

46. The Deregulation (Millennium Licensing) Order 1999 (SI no. 1999/2137) relaxed the restrictions on opening hours of licensed premises over Millennium Eve.

ANNEX B: STANDING ORDERS RELATING TO DEREGULATION ORDERS

Standing Orders of the House of Commons

18. - (1) If the Deregulation Committee has reported under paragraph (3) of Standing Order No. 141 (Deregulation Committee) that a draft order laid before the House under section 1 of the Deregulation and Contracting Out Act 1994 should be approved and a motion is made by a Minister of the Crown to that effect, the question thereon shall-

(a) if the committee's recommendation was agreed without a division, be put forthwith;

(b) if the committee's recommendation was agreed after a division, be put not later than one and a half hours after the commencement of proceedings on the motion.

(2) If the committee has reported that a draft order should not be approved, no motion to approve the draft order shall be made unless the House has previously resolved to disagree with the committee's report; the questions necessary to dispose of proceedings on the motion for such a resolution to disagree shall be put not later than three hours after their commencement; and the question shall be put forthwith on any motion thereafter made by a Minister of the Crown that such a draft order be approved.

(3) Motions to which this order applies may be proceeded with, though opposed, until any hour.

141. - (1) There shall be a select committee, called the Deregulation Committee, to examine every document containing proposals laid before the House under section 3, and every draft order proposed to be made under section 1, of the Deregulation and Contracting Out Act 1994.

(2) The committee shall report to the House, in relation to every document containing proposals laid before the House under the said section 3, either

(a) that a draft order in the same terms as the proposals should be laid before the House; or

(b) that the proposals should be amended before a draft order is laid before the House; or

(c) that the order-making power should not be used in respect of the proposals.

(3) The committee shall report to the House, in relation to every draft order laid before the House under the said section 1, its recommendation whether the draft order should be approved.

(4) The committee may report to the House on any matter arising from consideration of the said proposals or draft orders.

(5)(A) In its consideration of proposals the committee shall consider in each case whether the proposals

(a) appear to make an inappropriate use of delegated legislation;

(b) remove or reduce a burden or the authorisation or requirement of a burden;

(c) continue any necessary protection;

(d) have been the subject of, and take appropriate account of, adequate consultation;

(e) impose a charge on the public revenues or contain provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribe the amount of any such charge or payment;

(f) purport to have retrospective effect;

(g) give rise to doubts whether they are intra vires;

(h) require elucidation or appear to be defectively drafted;

(i) appear to be incompatible with any obligation resulting from membership of the European Union.

(B) In its consideration of draft orders, the committee shall consider in each case all the matters set out in sub-paragraph (A) above and the extent to which the Minister concerned has had regard to any resolution or report of the Committee or to any other representations made during the period for parliamentary consideration.

(6) The committee shall consist of eighteen members.

(7) The quorum of the committee shall be five.

(8) Unless the House otherwise orders, each Member nominated to the committee

shall continue to be a member of it for the remainder of the Parliament.

(9) The committee shall have power-

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place within the United Kingdom, and to report from time to time;

(b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference;

(c) to appoint a sub-committee, of which the quorum shall be two, which shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place within the United Kingdom;

(d) to communicate its evidence and any other documents relating to matters of common interest to any committee appointed by this House and to any committee appointed by the Lords to examine deregulation proposals and draft orders.

(10) The committee and the sub-committee shall have leave to meet concurrently with any select committee appointed by the Lords to examine deregulation proposals and draft orders and any sub-committee thereof.

(11) The committee and the sub-committee shall have the assistance of the Counsel to the Speaker and, if their Lordships think fit, the Counsel to the Lord Chairman of Committees.

(12) The committee and the sub-committee shall have power to invite Members of the House who are not members of the committee to attend meetings at which witnesses are being examined and such Members may, at the discretion of the chairman, ask questions of those witnesses; but no Member not being of the committee shall otherwise take part in the proceedings of the committee or sub-committee, or be counted in the quorum.

(13) It shall be an instruction to the committee that before reporting either

(a) that any proposal should be amended before a draft order is laid before the House, or

(b) that the order-making power should not be used in respect of any proposal, or

(c) that any draft order should not be approved,

it shall afford to any government department concerned an opportunity of

furnishing orally or in writing to it or to the sub-committee appointed by it such explanations as the department think fit. (14) It shall be an instruction to the committee that it report on every draft order not more than fifteen sitting days after the draft order was laid before the House, indicating in the case of draft orders which it recommends should be approved whether its recommendation was agreed without a division.

Standing Orders of the House of Lords

40. Notices shall be entered in the Order Paper in the order in which they are received at the Table, provided that:

(1) Starred Questions shall be entered before other business.

(2) Notices relating to Private Business may be entered before Public Business. At the discretion of the Chairman of Committees they may also be entered later in the Order Paper.

(3) Notices relating to the Business of the House and to the Chairman of Committees' Business, if he so desires, shall have priority over other Public Business except Starred Questions.

(4) On all sitting days except Wednesdays, notices and orders relating to Public Bills, Measures, Affirmative Instruments and reports from Select Committees of the House shall have precedence over other notices and orders save the foregoing.

(5) On Wednesdays, notices of Motions shall have precedence over notices and orders relating to Public Bills, Measures and delegated legislation.

(6) Any motion relating to a report from the Delegated Powers Scrutiny Committee on a draft order laid under section 1 of the Deregulation and Contracting Out Act 1994 shall be entered before a motion to approve that draft order.

(7) Subject to paragraphs (4), (5) and (6) the precedence of notices and orders relating to Public Bills, Measures, Affirmative Instruments and reports from Select Committees of the House may be varied on any day, if the convenience of the House so requires.

(8) Unstarred Questions shall be entered last.

72. - (1) No Motion for a resolution of the House to approve an Affirmative Instrument shall be moved until:

(*a*) except in the case of any Order in Council or draft Order in Council made or

proposed to be made under paragraph 1 of Schedule 1 to the Northern Ireland Act 1974, or a draft order proposed to be made under section 1 of the Deregulation and Contracting Out Act 1974, there has been laid before the House the report thereon of the Joint Committee on Statutory Instruments;

(*b*) in the case of a draft order proposed to be made under section 1 of the Deregulation and Contracting Out Act 1994, there has been laid before the House the report thereon of the Delegated Powers Scrutiny Committee; and

(*c*) in the case of a Hybrid Instrument, the proceedings under Private Business Standing Order 216 or 216A have been terminated.

(2) In this Standing Order "Affirmative Instrument" means an Order in Council, departmental order, rules, regulations, scheme or other similar instrument presented to or laid or laid in draft before the House where an affirmative resolution is required before it, or any part of it, becomes effective, or is made, or is a condition of its continuance in operation: but the expression does not include a Measure laid before the House under the Church of England Assembly (Powers) Act 1919 nor regulations made under the Emergency Powers Act 1920.

(3) An Order in Council that may not be made except in response to an address by the House to Her Majesty is an Affirmative Instrument within the meaning of this Standing Order, and a Motion for an address to Her Majesty praying that an order be made is a Motion to approve the order.

(4) An order, rules, regulations, scheme or instrument laid in draft before the House for the purpose of being approved by resolution of the House is an Affirmative Instrument within the meaning of this Standing Order notwithstanding that, if the draft is not approved, that instrument is subject to annulment in pursuance of a resolution of either House.

ANNEX C: TEXT OF THE ENFORCEMENT CONCORDAT

The Principles of Good Enforcement: Policy and Procedures
This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term "enforcement" are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Principles of Good Enforcement: Policy
Standards
In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

Openness
We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness
We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice /information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints about service
We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality
We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency
We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-Ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

Principles of Good Enforcement: Procedures
Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

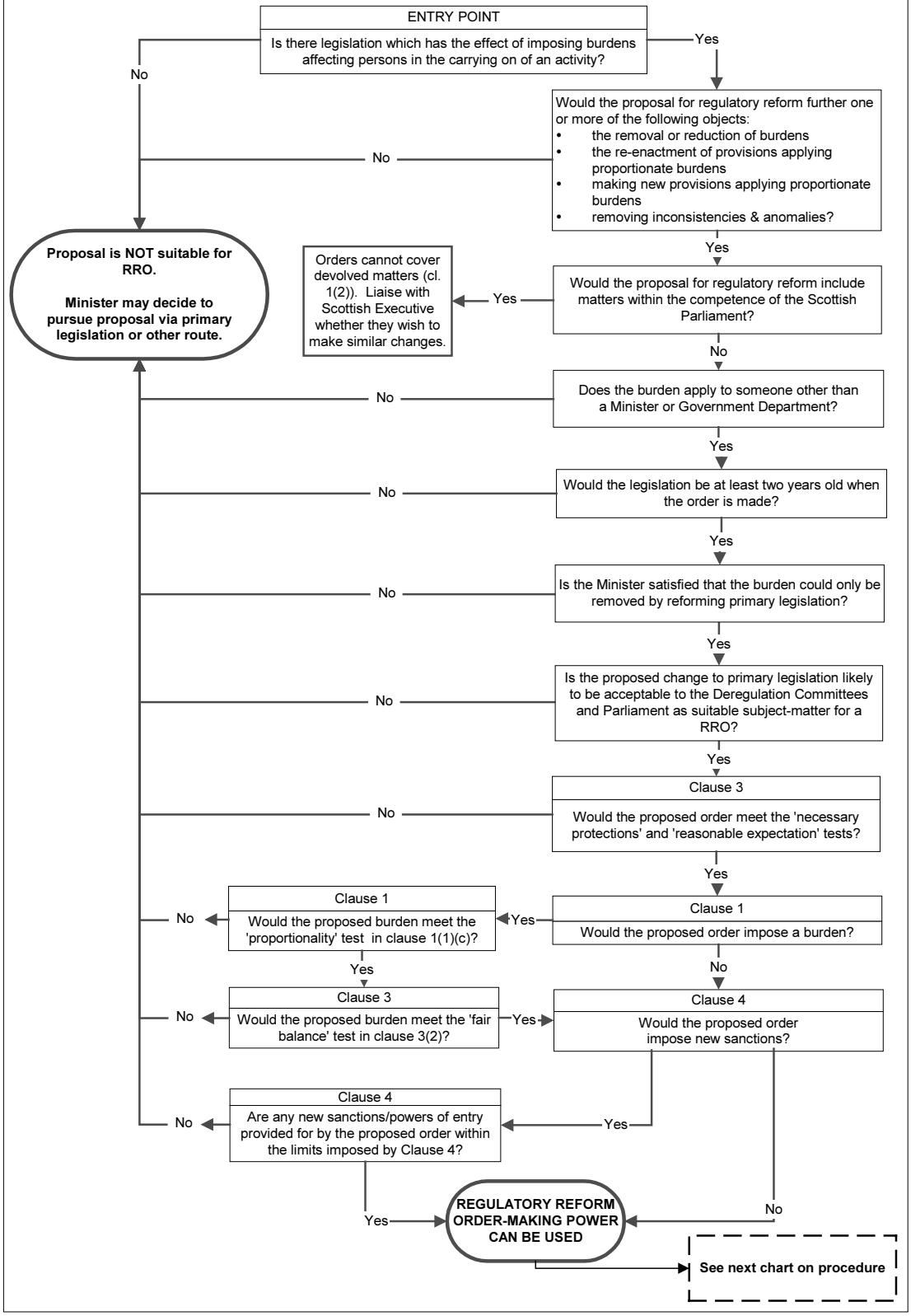
Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

March 1998

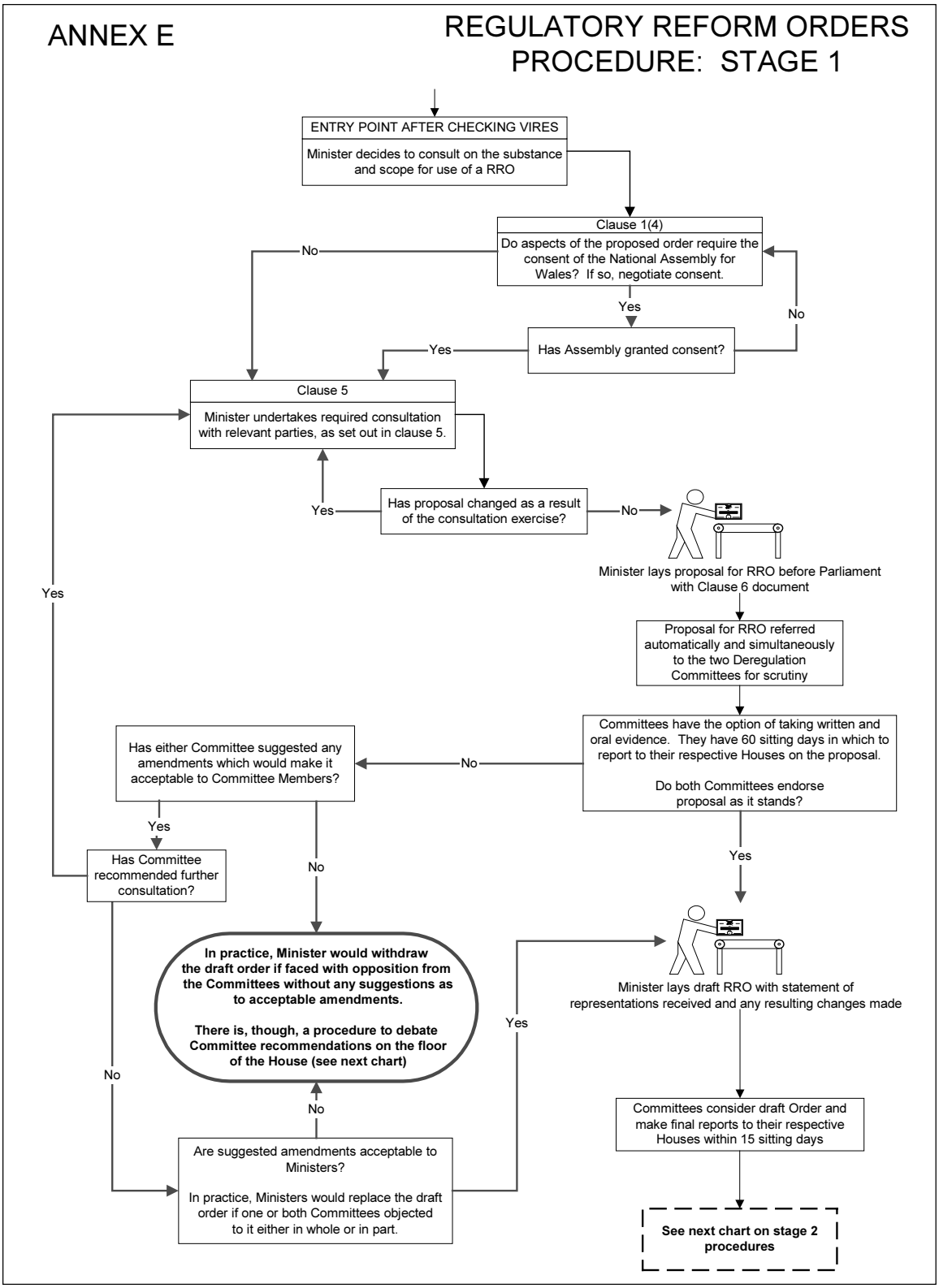
ANNEX D

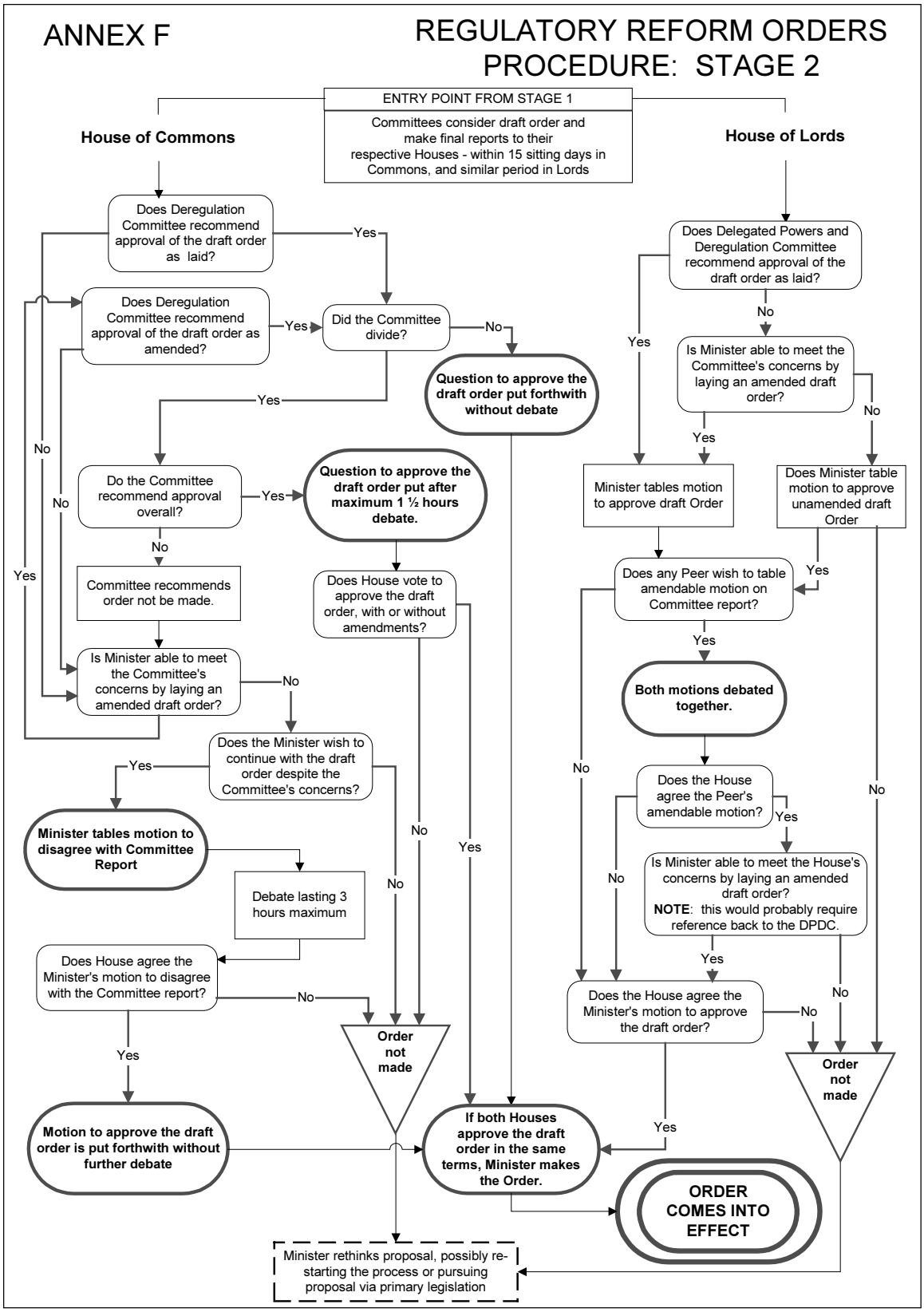
REGULATORY REFORM ORDERS: INITIAL CHECKS ON VIRES



ANNEX E

REGULATORY REFORM ORDERS PROCEDURE: STAGE 1




ANNEX F
REGULATORY REFORM ORDERS
PROCEDURE: STAGE 2
ENTRY POINT FROM STAGE 1
Committees consider draft order and make final reports to their respective Houses - within 15 sitting days in Commons, and similar period in Lords
House of Commons
House of Lords
Does Deregulation Committee recommend approval of the draft order as laid?
Yes
Does Deregulation Committee recommend approval of the draft order as amended?
Yes
Did the Committee divide?
No
Question to approve the draft order put forthwith without debate
Yes
No
Do the Committee recommend approval overall?
Yes
Question to approve the draft order put after maximum 1 ½ hours debate.
No
Committee recommends order not be made.
Does House vote to approve the draft order, with or without amendments?
Yes
No
Is Minister able to meet the Committee's concerns by laying an amended draft order?
No
Does the Minister wish to continue with the draft order despite the Committee's concerns?
Yes
No
Minister tables motion to disagree with Committee Report
Debate lasting 3 hours maximum
Does House agree the Minister's motion to disagree with the Committee report?
No
Yes
Order not made
Motion to approve the draft order is put forthwith without further debate
If both Houses approve the draft order in the same terms, Minister makes the Order.
Minister rethinks proposal, possibly re-starting the process or pursuing proposal via primary legislation
Does Delegated Powers and Deregulation Committee recommend approval of the draft order as laid?
Yes
No
Is Minister able to meet the Committee's concerns by laying an amended draft order?
Yes
No
Minister tables motion to approve draft Order
Does Minister table motion to approve unamended draft Order
Does any Peer wish to table amendable motion on Committee report?
Yes
No
Yes
Both motions debated together.
Does the House agree the Peer's amendable motion?
Yes
No
Is Minister able to meet the House's concerns by laying an amended draft order?
NOTE: this would probably require reference back to the DPDC.
Yes
No
Does the House agree the Minister's motion to approve the draft order?
No
Yes
Order not made
Yes
ORDER COMES INTO EFFECT

Regulatory Impact Assessment for the draft Regulatory Reform Bill

1. Title

This regulatory impact assessment (RIA) assesses the impact of measures included in the draft Regulatory Reform Bill ("the draft Bill").

2. Purpose and Intended Effect of the Measure

i. Issue

Clauses 1-8 of the Bill are aimed at removing the barriers to wider application of the deregulation order-making power under the Deregulation and Contracting Out Act 1994 (DCOA).

Sections 1-4 of DCOA provide powers for Ministers to make orders to amend or repeal any Act of Parliament passed before the end of the 1993/94 Session in order to remove or reduce statutory burdens from any person carrying on any trade, business or profession or otherwise, provided that no necessary protection would be removed. The power has been used 46 times to date, to remove generally small but significant burdens from business and individuals which would not otherwise have received Parliamentary time. These have included, for example, removing the need for 3-yearly re-authorisation of deductions of union subscriptions from salary; permitting bookings at registry offices 12 months in advance instead of three and relaxing the restrictions on opening hours of licensed premises over Millennium Eve. But the deregulation order-making power under DCOA is limited in scope. The draft Bill seeks to extend the power so that it can be used more widely.

Clauses 9-11 of the draft Bill are aimed at replacing and improving Section 5 of the DCOA. Under Section 5, Ministers may by order apply the enforcement procedure it sets out to named pieces of legislation. The procedure has been little used, and is regarded as inflexible and bureaucratic. The emphasis is now on securing voluntary adoption by enforcers of an Enforcement Concordat. The Concordat, which sets out the principles and procedures for fair, practical and consistent enforcement of regulations, has been widely welcomed as an alternative approach to Section 5. Clauses 9-11 of the draft Bill bring the legislation into line with this change of policy, by creating a reserve power for Ministers to set out a code of good enforcement practice.

ii. Objective

The new order-making power in clauses 1-8 is intended to be sufficiently wide, but no wider than necessary, to achieve useful regulatory reform. There are a number of differences between the proposed new order-making power and the power under DCOA. Orders under the new power, which are expected to be called Regulatory Reform Orders, will be able to reform legislation which imposes burdens on persons in the carrying on of activities. In doing so, they will be capable of:

- making and re-enacting statutory provision;

- imposing additional burdens where necessary, provided they are proportionate and strike a fair balance between the public interest and the interests of those affected by the new burden;

- removing inconsistencies and anomalies in legislation;

- dealing with burdensome situations caused by a lack of statutory provision to do something;

- applying to legislation regardless of enactment date but which is at least 2 years old;

- relieving burdens from anyone (except Ministers and government departments in circumstances where only they would benefit); and

- allowing administrative and minor detail to be further amended by subordinate provisions orders, subject to negative resolution procedure.

The draft Bill will build on the protections and procedural safeguards set out in DCOA, enhancing them to reflect the breadth of the new powers. The test of maintaining necessary protection is retained and supplemented by an additional test that no order should prevent anyone from exercising an existing right or freedom which they might reasonably expect to continue to exercise (the "reasonable expectations" test). Two further stringent tests apply if an order would impose a burden. The Parliamentary procedure will remain unchanged from DCOA, but Ministers bringing forward regulatory reform orders will be required to present more explanatory information to Parliament than they did with deregulation orders, to reflect the wider powers and additional safeguards.

The draft Bill will also include a reserve power for Ministers to set out a code of good enforcement practice. The power is intended for use only where inflexible or over-zealous enforcement could not otherwise be remedied. Any code would be drafted to deal with the particular enforcement problem that had arisen.

The current model for good enforcement is the Enforcement Concordat, which has already been fully adopted by approximately 50% of local authorities in England and Wales and the vast majority of central government enforcers.

The success of the Concordat has encouraged the Government to seek only a reserve power. As a long-stop, the power should provide assurance to business, the voluntary sector and others that enforcers will follow the principles and procedures set out in the Concordat.

If the power were exercised, the code would not be directly binding on enforcers. Compliance with the code would not affect whether a business was in breach of a regulation. But businesses facing a court or tribunal would be able to ask for any failure

to follow the code to be taken into account when considering penalties or other action, such as award of costs.

4. Expected Benefits

i. Benefits Identified

Clauses 1-8 set out the framework for **Regulatory Reform Orders** i.e. the circumstances under which they can be brought forward and the limitations on the power. Clauses 9-11 give Ministers the power to set out an **enforcement code** in certain circumstances. As a purely enabling Act, it will itself have no impact at all on business, charities, the voluntary sector, the public sector or individuals. The costs and benefits will flow over time from the individual orders that are brought forward by Ministers under the Act or from the impact of an enforcement code.

ii. Quantifying and Valuing the Benefits

In its passage through Parliament, the draft Bill will be accompanied by a list of examples where the new **Regulatory Reform Order-making power** could be used, to illustrate the principles of the new powers and aid discussion. However, the order-making power is wide and it is impossible to quantify in advance the costs and benefits associated with whatever orders may be brought forward.

Most importantly, each proposed order brought forward will, as under the existing power, be subject to widespread consultation and will have to be accompanied by its own regulatory impact assessment.

The new order-making power builds on the general principle of deregulation established by DCOA, in that its purpose is to reform legislation with a view to removing or reducing burdens on those carrying on activities, which includes business, charities, the voluntary sector and the wider public sector and individual citizens. The general expectation is that such reforms would tend to reduce the overall cost of regulation.

The same principle applies to the power to apply an **enforcement code**. The code would be tailored to the specific concerns that were driving its application. The consultation exercise that would precede any use of the power would explain the underlying circumstances, the proposed content of the code and which enforcement bodies would be affected. The RIA for an order imposing a code of enforcement practice would set out the projected impact on business, enforcers and others.

5i. Business Sectors Affected

As with the existing deregulation order-making power, any and all business, voluntary and charity sectors could benefit from a **Regulatory Reform Order**. In addition, the new order-making power will be able to be used to address burdensome legislation that impacts on the wider public sector, including local and central government except where only a Minister or government department would benefit from the order.

The provisions on **enforcement** are intended to protect all sectors but are expected to be particularly valuable to small businesses, which generally find it more difficult to keep up to date with changing regulatory requirements.

7. Identifying the Costs

As detailed above, there is no expectation that the new **Regulatory Reform Order-making power** will lead to increased costs overall for business or others, although each order would be accompanied by its own RIA.

The **enforcement** provisions are a precaution to ensure that legitimate commercial activity is not unreasonably hindered. There are therefore no anticipated costs to business. Any order would be accompanied by an RIA which would include any costs likely to fall on enforcers and how they would balance with projected benefits.

8. Results of Consultation

A consultation paper on the proposed changes to the **Regulatory Reform Order-making power** was published on 3 March 1999, inviting responses by 30 April 1999. It was distributed to over 200 organisations, including representatives of business, charities, local authorities, trade associations, academic institutions and individuals and the two Parliamentary Deregulation Committees. It was also placed on the Cabinet Office website.

45 responses were received, the majority of which were generally positive about the proposals. The responses influenced the development of the proposals into the measures included in the draft Bill. The Government published a formal response to the consultation exercise, as well as responding separately to each of the two Parliamentary Deregulation Committees (which also expressed broad support for the proposals).

The proposals regarding the **enforcement code** were the subject of a separate consultation document, published on 28 September 1999 for comments by 26 November 1999. Around 2000 copies were distributed, to a wide range of organisations, including all local authorities, other enforcers and a range of business representatives, with an interest. There were 131 responses in total, mainly from enforcers. There was clear majority support for the proposal, even amongst enforcers. All business groups who expressed a view were in support of the idea.

9. Summary and Recommendations

The Government believes that the proposals in the Regulatory Reform draft Bill, as outlined above, will result in more effective treatment of burdensome legislation and will encourage a more business-friendly approach to enforcement of regulations.

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