



National Assembly for **Wales**  
Cynulliad Cenedlaethol **Cymru**

# Legislative and Regulatory Reform Bill

## Abstract

This paper provides background briefing on the Legislative and Regulatory Reform Bill which received its First Reading in the House of Commons on 11 January 2006.

The Bill has three aims: to increase the pace of regulatory reform, restructure the regime for private regulators and improve the way in which EU legislation is implemented in UK law.

April 2006





# Legislative and Regulatory Reform Bill

Ben Stokes

April 2006

Paper number: 06/0425/BS

© Crown copyright 2006



## Executive Summary

The Legislative and Regulatory Reform Bill ('the Bill') [HC111] was presented to Parliament on Wednesday 11 January 2006. The Bill has three aims: to increase the pace of regulatory reform, restructure the regime for private regulators and improve the way in which EU legislation is implemented in UK law.

The Bill extends the scope of the powers available to Ministers to amend statute law by Order and at the same time relaxes the constraints of parliamentary scrutiny on the Order making process.

The wide-ranging power in Part 1 of the Bill potentially allows ministers to amend, repeal or replace any legislation, although the Government has given an undertaking not to use the procedure to deliver "highly political measures". The Constitution Committee of the House of Lords has expressed its concern at the "unprecedentedly wide powers" the Bill seeks to confer on Ministers.

The Bill will allow Ministers to require regulators to adhere to a code of practice, based on principles that were set out in the Hampton Review, *Reducing administrative burdens*.

It also seeks to simplify the process of updating technical European Union Regulations.

The Bill applies in relation to Wales and includes provisions that relate specifically to the powers of the Assembly. However, none of the powers conferred on the Assembly allow any greater flexibility than is given to the equivalent Minister in England.

The Bill was discussed at a recent Economic Development and Transport Committee meeting where a number of issues and concerns were raised with regard to the Assembly's involvement in the order-making process. The Welsh Assembly Government agreed to clarify its position with the Secretary of State and return to the Committee with a paper setting out their understanding of the situation.

The Bill is scheduled for further discussion at the Enterprise, Innovation and Networks Committee on 3 May 2006.



## Contents

<b>1</b>	<b>Introduction .....</b>	<b>3</b>
<b>2</b>	<b>Background .....</b>	<b>3</b>
<b>3</b>	<b>Review of 2001 Act.....</b>	<b>3</b>
<b>4</b>	<b>Consultation .....</b>	<b>5</b>
<b>5</b>	<b>Timetable .....</b>	<b>6</b>
<b>6</b>	<b>The Bill .....</b>	<b>6</b>
6.1	Part 1 – Power to Reform Legislation Etc. ....	6
6.1.1	<i>Clause 1 .....</i>	6
6.1.2	<i>Safeguards.....</i>	7
6.1.3	<i>Consultation .....</i>	7
6.1.4	<i>Procedure .....</i>	7
6.2	Part 2 – Regulators .....	8
6.3	Part 3 – Legislation Relating to the European Communities Etc.....	8
<b>7</b>	<b>Relevance to Wales.....</b>	<b>8</b>
7.1	Part 1.....	8
7.2	Part 2.....	9
7.3	Part 3.....	9
<b>8</b>	<b>Consideration by the National Assembly for Wales .....</b>	<b>10</b>
<b>9</b>	<b>Reaction to the Bill.....</b>	<b>11</b>
9.1	Representatives of the Business Community.....	11
9.2	Constitutional Concerns .....	12
9.2.1	<i>House of Lords Select Committee on the Constitution .....</i>	12
9.2.2	<i>Regulatory Reform Committee.....</i>	12
9.2.3	<i>Second Reading of the Bill.....</i>	13
9.2.4	<i>House of Commons Procedure Committee .....</i>	13
9.2.5	<i>Public Administration Select Committee .....</i>	14
<b>10</b>	<b>Government Response to Concerns .....</b>	<b>15</b>
10.1	Letter from Jim Murphy to Andrew Miller MP .....	15
10.2	Article in The Guardian newspaper .....	15





# Legislative and Regulatory Reform Bill

## 1 Introduction

On 11 January 2006 the Legislative and Regulatory Reform Bill<sup>1</sup> ('the Bill') was presented by Jim Murphy MP, Parliamentary Secretary to the Cabinet Office, and read the first time in the House of Commons.

It should be noted that all references to specific clauses relate to the Bill as amended<sup>2</sup> following the Committee stage.

Given that it aims to increase the pace of regulatory reform and reduce the burden on business, the Bill was remitted to be considered by the Economic Development and Transport Committee. The Committee first considered the Bill on the 16 March 2006 and it is scheduled for further discussion in the re-named Enterprise, Innovation and Networks Committee on 3 May 2006.

## 2 Background

Currently, the Government has a power under the Regulatory Reform Act 2001<sup>3</sup> to make Regulatory Reform Orders (RROs) which reform primary and secondary legislation to remove regulatory burdens.

RROs are intended to be used to iron out inconsistencies and amend problems in already-enacted legislation, without the need for a bill slot, and are subject to certain constraints. These include the stipulation that RROs must always remove or reduce some burdens. However, they can also apply new burdens, reapply existing burdens and remove inconsistencies and anomalies. The procedures that have to be followed before an Order can be made are set down in the Act and supplemented by the House of Commons Standing Orders. These include a two-stage consideration of orders by committees in both Houses of Parliament (the super-affirmative procedure).

Since the introduction of the Regulatory Reform Act in April 2001 there have been fewer than 30 RROs implemented, and a further 40 are at various stages of Parliamentary scrutiny. In addition to these there are over 50 proposals at varying degrees of development.

## 3 Review of 2001 Act

During the passage of the 2001 Act the Government gave an undertaking to review the Act. The review was informed by detailed feedback from Government departments which have been involved in the making of RROs under the 2001 Act, by the findings in the Better Regulation Task Force report *Less is More: Reducing Burdens, Improving*

<sup>1</sup> Legislative and Regulatory Reform Bill [HC111]  
<http://www.publications.parliament.uk/pa/cm200506/cmbills/111/06111.i-ii.html#top>

<sup>2</sup> Legislative and Regulatory Reform Bill [HC 141]  
<http://www.publications.parliament.uk/pa/cm200506/cmbills/141/06141.i-ii.html>

<sup>3</sup> Regulatory Reform Act 2001 <http://www.opsi.gov.uk/acts/acts2001/20010006.htm>

*Outcomes*<sup>4</sup>, and the findings of the Hampton review on regulatory inspections and enforcement<sup>5</sup>, both of which were published in March 2005.

The final report<sup>6</sup> of the Government's formal review of the Act was published in June 2005.

The report included the following summary of its findings:

The review has identified many positive aspects to the Regulatory Reform Order process:

- at a basic level the current framework is effective: at the end of July 2005 27 RROs have been made, all of which have delivered benefits to a wide range of interest groups and public bodies, including business, charities, local authorities and tenants.
- individual RROs have delivered specific cost benefits, including:
  - the Regulatory Reform (Special Occasions Licensing) Order 2002, which is estimated to save the licensing industry £9m per year,
  - the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, which is estimated to save businesses approximately £19 million a year, and
  - the Regulatory Reform (Fire Safety) Order 2005, which created one simple, risk-based fire safety regime, applying to all buildings the public might use. The RRO rationalised and simplified legislation spread over 50 Acts and will save businesses between £47 million and £137 million per year.
- requirements for consultation are important and help clarify which elements of proposals might be controversial.
- parliamentary scrutiny is thorough and effective.
- the safeguards, including the need to maintain necessary protection and protect rights and freedoms, have worked well, and remain essential.

However the review also finds that:

- The RRA lacks a clear, overarching **purpose**. The current objects of the RRO power are essentially technical. The RRA provides powers for the purposes of removing, reducing, re-enacting or imposing burdens and for the removal of inconsistencies and anomalies. This skews the preparation and scrutiny of proposals towards the identification and analysis of specific legal restrictions rather than to the overall benefits of the reform.
- The **concept of burdens**, which is central to the Act, is complex and burdensome to apply; it also limits the scope of reforms which can be delivered by RRO.
- In particular, RROs cannot clarify or simplify legislation unless in so doing burdens are removed, reduced, re-enacted or imposed.
- The Act has not enabled the delivery of **uncontroversial Law Commission recommendations** as effectively as expected,
- Specific restrictions on the current powers also complicate the preparation of RROs and limit the scope of proposals:

---

<sup>4</sup> Better Regulation Task Force report: *Less is More. Reducing Burdens, Improving Outcomes* <http://www.brc.gov.uk/publications/lessismoreentry.asp>

<sup>5</sup> Final report of the Hampton review 'Reducing administrative burdens: effective inspection and enforcement' [http://www.hm-treasury.gov.uk/budget/budget\\_05/other\\_documents/bud\\_bud05\\_hampton.cfm](http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm)

<sup>6</sup> Review of the Regulatory Reform Act 2001 [http://www.cabinetoffice.gov.uk/regulation/documents/pdf/br\\_act\\_review.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/pdf/br_act_review.pdf)

- the reference to '**carrying on an activity**' limits the ability to remove or reduce burdens which affect persons in a passive capacity or which relate to a one off action.
- the inability to **remove or reduce burdens which only affect a Minister or a Government Department** impedes reforms which would enhance the efficiency of the public services.
- the inability to reform **common law** has limited the scope of Law Commission recommendations implemented by RRO.
- the **two year rule** has caused disproportionate difficulties and led to significant elements of reforms having to be dropped for no real purpose.
- the absence of a power to create new secondary legislative powers (**sub-delegation**) has caused difficulties for larger reforms such as Fire Safety and led to other proposals being dropped. Whilst the safeguards are broadly effective, the way in which their application differs depending upon whether a burden is removed, re-enacted or imposed is overly complex.
- the parliamentary procedures for RRO proposals are disproportionate for smaller reforms.
- overall, the Act has not achieved its original intention. Its ability to deliver better regulation measures is not as wide-ranging as hoped and the number of reforms delivered is significantly lower than expected.

There is agreement that the RRO process is not suitable for highly controversial reforms, but the uncertain scope of the test of appropriateness and the fact that options for amendment are not as flexible as those for a Bill (Departments have to wait for a report and then respond to the Committees comments rather than receiving proposals for amendment earlier in the process) have led departments to think of RROs as inflexible and potentially risky.

Whilst recognising that the issue of what is appropriate for delivery by RRO is for Parliament to decide, the Government considers that these issues need exploring if proposals to broaden the powers in order to enable the delivery of a greater number of beneficial reforms are to be successful.

## 4 Consultation

Alongside its review, the Government published a consultation paper – *A Bill for Better Regulation*<sup>7</sup> – seeking views on how to reform the Act. The consultation ran from 21 July 2005 to 12 October 2005. A summary of responses to the consultation was published on 14 December 2005<sup>8</sup>. The document concluded that:

The consultation process played an important role in informing the Government's proposals for regulatory reform. Respondents expressed broad based support for the recommendations outlined in the consultation document, *A Bill for Better Regulation*. Respondents views also informed Government policy on issues such as the nature of RRO powers, levels of parliamentary scrutiny and for RROs reforming private or hybrid legislation by Order, and on implementation of the Hampton recommendations.

In light of the results of the consultation process, the Government has decided to move forward with the majority of proposals outlined in the consultation document, *A Bill for Better*

<sup>7</sup> A Bill for Better Regulation: Consultation Document  
[http://www.cabinetoffice.gov.uk/regulation/documents/pdf/consultation\\_doc.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/pdf/consultation_doc.pdf)

<sup>8</sup> A Bill for Better Regulation: Summary of Consultation Responses  
[http://www.cabinetoffice.gov.uk/regulation/documents/pdf/consultation\\_responses.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/pdf/consultation_responses.pdf)

*Regulation.* Government expects to bring the Regulatory Reform Bill before parliament in the new year.

## 5 Timetable

On 11 January 2006 the Legislative and Regulatory Reform Bill ('the Bill') was presented by Jim Murphy MP, Parliamentary Secretary to the Cabinet Office, and read the first time in the House of Commons. The Bill was given a second reading on 9 February.

The Bill was discussed in Standing Committee over eight sittings between 28 February and 9 March 2006. During the Committee stage a few minor amendments were made to the Bill, all of which were proposed by the Government. None of the amendments proposed by other members of the Committee was successful. There were no amendments made to Part 1 of the Bill.

The next stage is known as the Report stage. At this stage, the House may make further amendments to the Bill but does not consider those clauses and Schedules to which no amendments have been tabled.

The Report stage provides an opportunity for Members who were not on the Standing Committee to move amendments to the bill. The delay between Committee and Report allows time for the Government to give further thought to some of the points raised during the committee stage. They may, for example, choose to bring forward their own amendments in lieu of amendments which were rejected or withdrawn in the Committee. The House may reverse or amend changes made by the Standing Committee.

No date has been set for the Report Stage.

## 6 The Bill

The Bill is in four Parts. Parts 1 to 3 are considered in detail below.

### 6.1 *Part 1 – Power to Reform Legislation Etc.*

#### 6.1.1 *Clause 1*

As indicated in the Government's commentary on the responses it received to its consultation on *A Bill for Better Regulation*, the purpose of the order making power in Clause 1 of the Bill is drawn far wider than originally outlined. The Government's proposal in the consultation document was:

The Government specifically proposes that RRO powers should be extended so that it is possible to amend or repeal primary legislation in order to do **one or more** of the following three things:

- remove, reduce, re-enact or impose burdens (as now);
- simplify legislation; and
- implement uncontroversial Law Commission recommendations, including those that amend common law.<sup>9</sup>

However, Clause 1 (1) of the Bill simply states:

---

<sup>9</sup> Cabinet Office, *A Bill for Better Regulation: Consultation Document*, July 2005, p7

A Minister of the Crown may by order make provisions for either of both of the following purposes –

- (a) reforming legislation
- (b) implementing recommendations of any one or more of the United Kingdom Law Commissions, with or without changes.

Therefore, the restriction that the order has to remove burdens, as currently in place in the 2001 Act, has been removed. The concern caused by the proposed widening of the order making power is considered in section 9.2 of this paper.

The rest of Part 1 of the Bill outlines various conditions on the order making power and the procedures that Ministers have to follow in using the power.

### *6.1.2 Safeguards*

The existing “safeguards” or conditions surrounding the current order-making power have been amended and will apply to all orders made under the powers in the Bill. The conditions (or safeguards) are set out in Clause 3 (2):

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

However, as the Explanatory Notes accompanying the Bill notes, the Minister who is proposing the Order is the **only** person who has to be satisfied that the conditions have been met

there are five conditions which, where they are relevant, the Minister must consider are met before making an order.<sup>10</sup>

### *6.1.3 Consultation*

Before a Minister can propose an order, he has to consult interested bodies. The process that the Minister must follow is set out in Clause 11.

### *6.1.4 Procedure*

The procedural requirements for making an order under clause 1 are dealt with in Clauses 10 to 19. The House of Commons Library has produced a paper<sup>11</sup> on the Bill and the section on the detailed order-making procedure is reproduced below.

<sup>10</sup> *Legislative and Regulatory Reform Bill 2005-06 – Explanatory Notes*, para 27  
<http://www.publications.parliament.uk/pa/cm200506/cmbills/111/en/06111x--.htm>

<sup>11</sup> The Legislative and Regulatory Reform Bill, House of Commons Library, research Paper 06/06  
<http://www.parliament.uk/commons/lib/research/rp2006/rp06-006.pdf>

At present all regulatory reform orders are implemented under the super-affirmative procedure, which allows the Regulatory Reform Committee to consider the proposed order and suggest amendments to it and then reconsider the order before it gives a recommendation to the House on whether to approve the order. This process is mirrored in the House of Lords, where the Delegated Powers and Regulatory Reform Committee performs a similar function.

However, clause 13 provides for the Minister proposing the order to recommend the procedure under which Parliament should consider the order. It allows the Minister to choose between:

- (a) the negative resolution procedure;
- (b) the affirmative resolution procedure; or
- (c) the super-affirmative resolution procedure.

Only under the super-affirmative order (Clause 16) would Committees have the power to make recommendations for amendments to the Government. If the super-affirmative order making procedure is not used, the Government would not have the opportunity to make amendments to an order after it had been laid before Parliament.

The Regulatory Reform Committee also pointed out that the general public would have less opportunity to comment on any orders made in this way. In evidence to the Committee, the Minister emphasised that the Committee would have a role in determining whether an order was the appropriate way to implement a particular legislative change. The Bill does not specify the procedures to be followed, should either Committee consider that it is not appropriate to use an order making power in a specific instance.

## **6.2 Part 2 – Regulators**

The origins of Part 2 of the Bill lie in some of the recommendations of the Hampton Review<sup>12</sup>. It places a duty on regulators to adhere to certain principles in performing their duties; and allows Ministers to issue and revise a code of practice for which specified regulatory bodies would be subject to.

## **6.3 Part 3 – Legislation Relating to the European Communities Etc.**

Part 3 of the Bill brings forward measures that were included in the *European Union Bill 2005-06*, which has since been shelved, to allow technical amendments made to European Community legislation to come into effect automatically in the UK without the need to amend domestic regulations made to implement the original European legislation.

# **7 Relevance to Wales**

The Bill applies in relation to Wales and includes provisions that relate specifically to the powers of the Assembly. None of the powers conferred on the Assembly allow any greater flexibility than is given to the equivalent Minister in England.

## **7.1 Part 1**

The main provisions in Part 1 in relation to Wales include:

---

<sup>12</sup> Final report of the Hampton review 'Reducing administrative burdens: effective inspection and enforcement'  
[http://www.hm-treasury.gov.uk/budget/budget\\_05/other\\_documents/bud\\_bud05\\_hampton.cfm](http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm)

- Where an order seeks to alter the functions of the Assembly, it can do so only with the permission of the Assembly, (Clause 9) and,
- Where an order does not seek to alter the functions of the Assembly, but relates to an area for which the Assembly has responsibility, the Minister must consult with the Assembly before making the order. (Clause 11)

Clause 8, which deals with Scotland, prevents a Minister of the Crown making a provision that would be within the legislative competence of the Scottish Parliament, except insofar as it is consequential, supplementary, incidental or transitional.

The difference between clause 8 in relation to Scotland and clause 9 in relation to Wales is noteworthy. An order under this Act could not legislate for Scotland in relation to a devolved matter, save in the limited circumstances referred to above. The power in relation to Wales is much broader.

## **7.2 Part 2**

There are two specific references to Wales in Part 2:

- Clause 21 allows a Minister to issue or revise a code of practice which applies to regulators. However, a Minister may not specify a regulatory function that is exercisable only in or as regards Wales: instead the power is conferred on the Assembly and any such functions may be specified, by order, by the Assembly
- Clause 23(3)(c) prevents a Minister specifying a regulatory function that is exercisable only in or as regards Wales for the purposes of clause 20, which sets out “the regulatory principles”, and clause 21, which provides for the issuing and revision of a Code of Practice. Clause 23(4) instead provides that the Assembly may by Order specify such a function for those purposes.

## **7.3 Part 3**

There are a number of provisions in Part 3 of the Bill of relevance to the Assembly.

- Clause 25 will assist the Assembly in its legislative role. Currently, when domestic legislation refers to a Community instrument which has been amended or applied by other Community instruments, it is necessary to specify all the instruments which have amended or applied it. This can make for very long references. Clause 25 is designed to make the drafting of domestic instruments simpler in that, in future, a reference to a “Community instrument”, in any legislation, will be taken as a reference to the instrument “as so amended, extended or applied”.
- Clause 26(1) amends the Interpretation Act 1978 to add to the terms defined in Schedule 1 the expressions “EEA agreement” and “EEA state”. That will enable those expressions to be used in Assembly legislation without the need to define them specifically in that legislation.
- Section 2 of the *European Communities Act 1972* allows Ministers to make regulations to implement Community obligations in the United Kingdom. Clause 27 of the Bill additionally grants Ministers the power to make orders, rules or schemes to implement Community obligations. This power is conferred on the Assembly in



the areas for which it has responsibility and will be exercisable by statutory instrument.

- Clause 28 will enable subordinate legislation made for the purposes of implementing Community obligations to refer to community instruments “as amended from time to time”. Accordingly, it will not be necessary to make repeated amending legislation to update cross-references to Community instruments as happens frequently in relation to animal health and food legislation. This will reduce the volume of routine legislation required to be made.

## **8 Consideration by the National Assembly for Wales**

The Bill was discussed at the Economic Development and Transport Committee<sup>13</sup> on 16 March 2006, which was attended by representatives of CBI Wales and the Cabinet Office.

Members of the committee raised a number of concerns that reflected the controversy reported in the press and the recent discussions in the Standing Committee regarding the scope of the Order-making powers in Part 1. Members were concerned that the scope of the Bill and the powers it gives to Ministers potentially goes much further than simply enabling the regulatory burden on business to be reduced. A Member remarked that the Bill “gives Ministers powers far beyond those that they currently have, and it takes power away from Westminster as well as, potentially, from Assembly Members”. In relation to clause 9, it was suggested that a concern might be that Assembly legislation could be amended by UK Government Ministers, because clause 9 is not drawn sufficiently widely to prevent Assembly legislation from being amended without the consent of the Assembly, although consultation would be required under clause 11(1).

The Government has made an undertaking not to deliver highly controversial proposals by Order, although this is not enshrined in the Bill itself. During the course of the discussion the Cabinet Office conceded that under the Bill, as it currently stands, it would technically be possible to abolish the National Assembly for Wales by Order, rather than by an Act. However, the Assembly would have to give its consent to such an Order for it to be passed.

There was also discussion around the complexities raised by the fact that the Bill refers to the current constitutional position in Wales which is subject to change given that the Government of Wales Bill is going through Parliament at the same time. For example, where the Bill currently requires the ‘agreement of the Assembly’, this could be changed by a consequential amendments Order made by the Secretary of State under clause 159 (2) of the Government of Wales Bill to the ‘agreement of Welsh Ministers’.

In light of the issues raised, Andrew Davies agreed to clarify the position with the Secretary of State and return to the Committee with a paper<sup>14</sup> setting out the Assembly Government’s understanding of the situation.

On the issue of whether the Bill provisions could be used to override legislation made in Wales the Welsh Assembly Government paper<sup>15</sup> states

<sup>13</sup> RoP p23-35, 16 March 2006, Economic Development Committee  
<http://assembly/rop/ROP/Committees/EDT/edt060316fv7.pdf>

<sup>14</sup> National Assembly for Wales, Enterprise, Innovation and Networks Committee Paper EIN(2) 01-06 (p.5), 3 May 2006  
<http://www.wales.gov.uk/keypubassemcommittees/index.htm> This paper will be published on the website of the National Assembly for Wales prior to the meeting.



As regards subordinate legislation which will be made prior to May 2007 by the Assembly and after May 2007 by the Welsh Ministers, that subordinate legislation could not be modified without the consent of either the Assembly or – when they have assumed those functions - the Welsh Ministers. Most legislative and regulatory reform orders will be modifying provisions in Acts of Parliament.

**However the LRR Bill is silent as to what consent is required where a legislative or regulatory reform order proposes to modify an Assembly Measure or an Act of the Assembly (which is possible given the definition of “legislation” in clause 1 (3) of the LRR Bill) or when a legislative or regulatory reform order seeks to make provision that is within the legislative competence of the Assembly.** The Welsh Assembly Government position is that the consent of the Assembly should be required in such cases. This is being pursued in conjunction with the Cabinet Office: **it is quite normal for amendments to Bills to have to be made to take account of other legislation being considered in the same session.**

On the issue of whether Orders will need to be agreed by Welsh Assembly Government Ministers or by the Assembly, the paper states

The agreement of the Assembly must be obtained where an order either confers a function on the Assembly, or modifies or removes a function of the Assembly or merely restates a provision of legislation which itself conferred a function on the Assembly.

The current wording in the Bill applies to the National Assembly for Wales as constituted by the Government of Wales Act 1998, meaning that the consent of the Assembly as a whole is required in these circumstances. The wording carries forward provisions in the 2001 Regulatory Reform Act.

However the Government of Wales Bill provides that when the separation of the Welsh Ministers as an executive from the Assembly as a legislature takes place following the May 2007 elections, the functions exercised by the Assembly will become functions of the Welsh Ministers unless different provision is made by Order in Council. **Thus as things stand, after May 2007 it will be the Welsh Ministers who will have to give their consent to orders which affect their functions and who will have to be consulted under Clause 11 of the LRR Bill on proposals relating to their functions, where their consent is not already required under Clause 9 of the Bill.**

## 9 Reaction to the Bill

### 9.1 *Representatives of the Business Community*

The Bill appears to have been broadly welcomed by business given the apparent increase in the power of Ministers to reduce regulatory burdens.

Following the publication of the Bill, senior representatives of five major UK business groups, including the Confederation of British Industry and the Federation of Small Business, wrote a joint letter<sup>16</sup> to Jim Murphy MP expressing their support.

We welcome the Legislative & Regulatory Reform Bill...

[...]

---

<sup>15</sup> *ibid*

<sup>16</sup> Letter to Jim Murphy MP from five major UK business groups  
<http://www.cabinetoffice.gov.uk/regulation/documents/bill/letter.pdf>

Business threw down a gauntlet to the Government on the burden of regulation, which is stifling our ability to innovate and compete on the global stage. It accepted our challenge; and 2006 is delivery year. The Government's efforts on deregulation will have our wholehearted support, so long as it keeps its eye on the ball and keeps listening to business.

## **9.2 Constitutional Concerns**

Concerns have been raised on a number of occasions in both the House of Commons and the House of Lords as to the dramatic constitutional changes the Bill stands to make in its current form.

### *9.2.1 House of Lords Select Committee on the Constitution*

In a letter<sup>17</sup> to the Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Holme, the Committee's chairman, expressed concerns that the Bill sought to confer "unprecedentedly wide powers" on Ministers.

When the Secretary of State for Wales appeared in front of the Committee on 15 February 2006, the Chair drew parallels between the *Government of Wales Bill* and the *Legislative and Regulatory Reform Bill*, expressing a growing "edginess" in the Committee about moving things which used to be the sphere of parliamentary legislation to enactment through Orders in Council<sup>18</sup>.

### *9.2.2 Regulatory Reform Committee*

The Regulatory Reform Committee has examined the Government's proposals. It considered that the Bill

has the potential to be the most constitutionally significant Bill that has been brought before Parliament for some years.

It also took the step of issuing a special report<sup>19</sup> in view of the constitutional significance of Part 1 of the Bill, despite the short time between First and Second Reading.

The Committee also commented that "there are few limits" to the powers that the Bill gives to amend any legislation by order.

The removal of the restriction that an Order has to remove burdens, as currently in place in the 2001 Act, prompted the Committee to describe the Bill as

essentially a law reform Bill

---

<sup>17</sup> Letter from Chair of the House of Lords Select Committee on the Constitution to the Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Holme. 23 January 2006  
<http://www.parliament.uk/documents/upload/Letter%20to%20Lord%20Chancellor%2023%2001%2006%20%28word%29.doc>

<sup>18</sup> House of Lords Select Committee, Uncorrected Evidence, 15 February 2006  
<http://www.publications.parliament.uk/pa/ld/lduncorr/const150206.pdf>

<sup>19</sup> Regulatory Reform Committee - First Special Report, 31 January 2006  
<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmdereg/878/87806.htm#a17>

rather than a regulatory reform Bill<sup>20</sup>. And although the committee acknowledged that the Bill contained safeguards it said

these safeguards seem dwarfed when set against the increased powers that the Bill will provide to Ministers<sup>21</sup>.

### 9.2.3 *Second Reading of the Bill*

The Conservative spokesman Oliver Heald MP made the link between the *Legislative and Regulatory Reform Bill* and the *Government of Wales Bill*, in his speech on the Second Reading of the *Legislative and Regulatory Reform Bill*<sup>22</sup>:

The Government are taking several overlapping measures, all of which remove power from the House and give it to Ministers. There is a process in the Government of Wales Bill to take power from the House and give it to Wales on a case-by-case basis.

### 9.2.4 *House of Commons Procedure Committee*

In summarising its concerns the Committee's report<sup>23</sup> on the Legislative and Regulatory Reform Bill states

The tests in the previous legislation have been removed and in their place there are only a number of 'preconditions' which a Minister must consider to have been satisfied and a requirement to undertake public consultation.

Furthermore it is for Ministers to propose what form of parliamentary scrutiny any such order should be subject to.

The procedural implications of the Bill are directly influenced by its scope. The House will expect significantly greater and more elaborate procedural safeguards over the use of a new power whose scope represents a fundamental change in the way Parliament deals with legislation than over the use of a power which is no more than an incremental development of an existing and well-established procedure.

We agree with the Regulatory Reform Committee that, as drafted, the Bill is of major constitutional significance.

With regard to the level of parliamentary scrutiny that orders will be subject to and the scope of the order-making power the report concludes that

The purpose of this report is to assist the House in its consideration of the Bill at report stage and third reading. When we took evidence from the Minister before the Bill's second reading, we understood that he intended to respond positively to many of the recommendations of the Regulatory Reform Committee. He promised to publish a substantive reply to that Committee's recommendations before the Bill began its consideration in standing committee. We had expected him to bring forward amendments in standing committee to implement those recommendations which the Government accepted.

But no amendments have been made to Part 1 of the Bill in the standing committee. The Minister has repeated the assurances which he gave us in evidence and which he gave the

<sup>20</sup> Regulatory Reform Committee, *Legislative and Regulatory Reform Bill*, 6 February 2006, HC 878 2005-06, para 3

<sup>21</sup> Regulatory Reform Committee, *Legislative and Regulatory Reform Bill*, 6 February 2006, HC 878 2005-06, para 4

<sup>22</sup> HC Deb 9 February 2006 C1067 <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060209/debtext/60209-22.htm>

<sup>23</sup> House of Commons Procedure Committee, Report on the Legislative and Regulatory Reform Bill, 14 March 2006, HC 894 <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmproced/894/894.pdf>

House during the second reading debate. **We have not yet seen the amendments which he has promised for report stage. We do not believe that the fundamental concerns over the powers in this Bill to amend primary legislation by order, which have been raised by the Regulatory Reform Committee and which we share, can be addressed by ministerial assurances. The merits of any legislation must be judged by what its provisions state. The provisions of this Bill, as reported from the standing committee, do not provide adequate levels of parliamentary scrutiny over, or safeguards against the misuse of, the order making powers they contain.**

#### 9.2.5 *Public Administration Select Committee*

The Committee reported<sup>24</sup> on the Bill on 20 April 2006 and concluded that

We accept that the current legislative process can be too cumbersome for uncontroversial improvements and simplifications of existing law. That is why we support this Bill. But there has been too much emphasis on reducing the relatively light constraints of Parliamentary procedures, and too little on tackling the culture which gives politicians and civil servants little incentive to put effort into preparing a Regulatory Reform Order, or bringing forward a Law Commission Bill. It is troubling that it is believed to be easier to bring forward changes to the way in which Parliament makes law, than it is to tackle blockages within Whitehall. **As currently drafted, the Legislative and Regulatory Reform Bill gives the Government powers which are entirely disproportionate to its stated aims. The Government has undertaken to amend it, and it must do so, to ensure that by the time it leaves this House it provides adequate safeguards against the misuse of the order making powers it contains.**

[...]

We are not satisfied by the emphasis on Government undertakings as a means of limiting the use of powers given by the Bill. Over the long term, it is all too easy for absolute undertakings to be broken, first because circumstances are exceptional, then because they are unusual, and finally because the undertaking itself has become obsolete.

[...]

We are delighted that, during the Committee stage of the Bill, the Minister announced that he would bring forward a Parliamentary veto on the use of the procedures in the Legislative and Regulatory Reform Act.

As the Minister himself noted, "to get the veto provision correct will take a great deal of work and thorough consideration". We will look most carefully at any amendments the Government brings forward. Moreover, we draw attention to the Procedure Committee's recommendation that there should be a power of veto which could be exercised outside the Committee as well as within it.

---

<sup>24</sup> Public Administration Select Committee, Third Report, 20 April 2006  
<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpublicadm/1033/103302.htm>

## 10 Government Response to Concerns

### 10.1 *Letter from Jim Murphy to Andrew Miller MP*

On the 12 April 2006 Jim Murphy MP wrote to Andrew Miller MP, Chair of the Regulatory Reform Committee following the completion of the Committee stage.

With regard to concerns about the scope of the order-making power and the safeguards in the Bill Mr Murphy wrote

[...] in its current form, the Bill has caused some people to voice concern about the order making power of the Bill. Some of the wilder concerns have ranged from government being able to use the power to abolish trial by jury to repealing the Magna Carta. These and other farfetched concerns about our constitutional arrangements could never happen as a result of this Bill.

[...] I have listened to more measured concerns about using the power for changes to legislation that deliver no better regulation benefit. Again I must stress that this Bill is to deliver our better regulation agenda and nothing else.

[...]

I am writing to you today to confirm my intention to move this debate on to the real agenda of better regulation and to remove any cause for concern that the Legislative and Regulatory Reform Bill could ever be used for anything other than achieving our better regulation objectives.

Let me be quite clear, safeguards already in the Bill ensure that the ordermaking power cannot be used to remove necessary protections, rights or freedoms. And I have already **made a commitment to give Parliament a statutory veto on the face of the Bill**. In addition, I am now looking into making the power more clearly focused on delivering better regulation objectives. But I am determined that the power is framed in such a way that we still are able to deliver real change, including the initiatives that departments will be proposing in their forthcoming simplification plans and the benefits of our ambitious admin burdens reduction programme. There is real determination in Government to deliver on these commitments.

[...]

I hope to bring forward appropriate amendments by Commons Report Stage to achieve these aims.<sup>25</sup>

### 10.2 *Article in The Guardian newspaper*

On the 13 April 2006 The Guardian<sup>26</sup> reported that the government is to “write new safeguards” into the Bill.

Jim Murphy told the Guardian that including the safeguards would make it impossible to use the law to make constitutional changes and he stressed its sole purpose was to cut red tape and insisted opponents had overhyped its implications.

The article quotes Mr Murphy as saying

---

<sup>25</sup> Letter from Jim Murphy to Andrew Miller, 12 April 2006  
[http://www.cabinetoffice.gov.uk/regulation/documents/bill/letter\\_am.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/bill/letter_am.pdf)

<sup>26</sup> Labour backs down over regulatory reform bill safeguards, The Guardian, 13 April 2006  
<http://www.guardian.co.uk/guardianpolitics/story/0,,1752709,00.html>



It wasn't and isn't our intention to do the sort of things that to some extent have been suggested. There's been hyperbole and ridiculous claims . . . This bill is about regulations; it has never been about the constitution. It's about defining the power more precisely to show what it is we seek to do.

We always said we would listen, and for the last couple of months we have been looking at drafting amendments to do two things: deliver better regulation agenda but also take the constitutional debate off the table.

It will make it impossible, not just difficult, to do the sorts of things which some people have raised.

Mr Murphy said he also wanted the amendments, which will be tabled when the Bill reaches its report stage in the Commons shortly, to ensure select committees could block contentious changes.

Let's see if we can strengthen those powers, so it is not [just] a convention that we won't override them - I think we need a statutory veto on the face of the bill