

Legislation Committee

Date: 4 April 2006
Time: 9.30am
Venue: National Assembly for Wales, Cardiff Bay
Title: Scrutiny of Legislation in the Assembly

The Legislation Committee considered the following paper which was considered by the Economic Development and Transport Committee.

EDT(2) 05-06 (p.4)

ECONOMIC DEVELOPMENT & TRANSPORT COMMITTEE

Date: 16 March 2006
Time: 9.00 to 12.20
Venue: Committee room 3, Senedd, Cardiff Bay
Title: Legislative and Regulatory Reform Bill

Purpose

1. To inform the Committee about progress on the Legislative and Regulatory Reform Bill. Adrian Treharne, Cabinet Office's Project Manager of the Bill will be attending the Committee and will be available to answer Member's questions.

Summary

2. At present, the Government has a power under the Regulatory Reform Act 2001 (2001 Act) to make orders which remove regulatory burdens, subject to certain constraints.

3. The current regulatory reform order (RRO) power under the 2001 Act is limited and unnecessarily complex. This has contributed to the disappointing number and rate of reforms that have been delivered under the Act.

4. During the passage of the 2001 Act the UK Government gave an undertaking to review the Act in 2004. At that time, the Act had not been used as extensively as had been envisaged, so it was agreed with the relevant Committees in Parliament that the review would be delayed until further use had been made of the Act.

Background to the Bill

5. Government's Better Regulation agenda includes the implementation of proposals outlined in two reports. The Better Regulation Task Force report: *Less is More: Reducing Burdens, Improving Outcomes* contained recommendations for administrative burden reduction and rolling simplification programmes across Whitehall. "*Reducing administrative burdens: effective inspection and enforcement*" (The Hampton report) contains principles for open and proportionate enforcement by regulators. The implementation of these reports will require legislative and regulatory reform.

6. The purpose of the measures contained in the Bill, is to make it simpler and faster to amend, repeal or replace outdated, unnecessary or overcomplicated legislation by order, with the policy aim of creating a better regulatory environment. It will also enable implementation of Law Commission recommendations, including those that reform the common law. The measures will enable mergers recommended in the report the Hampton Report. The Bill will also provide the possibility of putting general regulatory principles onto a statutory footing and of issuing a statutory Code of Practice and of simplifying the implementation into domestic legislation of European legal obligations.

7. The Bill has been widely welcomed by business representatives. An outline of the Government's proposals is at Annex 1. The Bill may be found at the link below:

<http://www.publications.parliament.uk/pa/cm200506/cmbills/111/2006111.htm>

Implications for Wales

8. The Bill applies in relation to Wales and includes provisions that relate specifically to the powers of the National Assembly for Wales.

- Part 1 of the Bill provides, that an order may not make any provision conferring a function on the Assembly, modifying or removing a function of the Assembly, or restating any provision that confers a function on the Assembly, without the agreement of the Assembly.
- Where the agreement of the Assembly is not required, a Minister of the Crown proposing to make an order under the power in Part 1 must consult the Assembly (in accordance with clause 11) where the proposals, as they apply to Wales, relate to any matter in relation to which the Assembly exercises functions.
- In Part 2 of the Bill, clause 22 allows a Minister of the Crown to specify, by order, which regulatory functions are covered by the Principles and Code of

Practice. However, a UK 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.

- Part 3 of the Bill deals with legislation relating to the European Communities Act. Clause 26 contains an amendment to the Government of Wales Act, consequential on the amendment made by subsection (1). The Act further provides that the powers of a Minister of the Crown to make an order to amend enactments or subordinate legislation referring to regulations made under section 2(2) of the ECA 1972, to include a reference to any order, rules or scheme, shall also be exercisable by the Assembly, insofar as it relates to a matter in respect of which functions are exercisable by the Assembly. This power is to be exercisable by statutory instrument.

Compliance

9. There are no issues of regularity or propriety.

Financial Implications

10. There are no financial implications.

Action for the Committee

11. The Committee is invited to note the content and progress of the Bill.

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Regulatory Reform Bill Proposals

Powers

General power to make orders

- reforming legislation, or
- implementing Law Commission recommendations, including those reforming the common law.

Conditions

An order may only be made if the responsible Minister is of the opinion that the order:

- does not remove any necessary protection
- does not prevent anyone from continuing to exercise any rights or freedoms which they might reasonably expect to continue to exercise
- will produce effects which are in due proportion to its aim
- strikes a fair balance between the public interest and the interests of any person adversely affected by it
- is desirable, because of the comparative inadequacy of non-legislative solutions to the problem which the order is intended to solve or mitigate

Taxation, criminal penalties, search and forcible entry

An order cannot:

- impose or increase taxation
- create new criminal penalties above a specified limit, nor increase criminal penalties beyond that limit (to note, this does not apply to orders implementing Law Commission recommendations)
- create new powers for: forcible entry, search, or seizure; or compelling the giving of evidence (to note, this does not apply to orders implementing Law Commission recommendations)

Sub-delegation

An order may create new legislative powers to be exercised by normal Statutory Instrument procedures

Consultation

A Minister who proposes to make an order must consult on the proposals unless reliance can be placed on a prior Law Commission consultation.

Explanatory Documents

- The Minister must lay a draft order and explanatory document before Parliament explaining the extent (if any) to which the order will further certain better regulation aims:
 - making the overall effect of the law less onerous to those affected by it
 - increasing the effectiveness or efficiency of those persons affected by the order

- simplifying or modernising the law
- removing inconsistencies and anomalies In the case of an order implementing Law Commission recommendations, the explanatory document need not contain this explanation but must explain its derivation.
- The explanatory document should also explain why the Minister considers that the conditions, including the safeguards carried over from the Regulatory Reform Act have been met, and assessing the impacts of the order.

Parliamentary Scrutiny

- The Minister may recommend a draft order undergo either negative, affirmative or super-affirmative procedure
- The Parliamentary scrutiny committees can require a higher level of scrutiny than that proposed by the Minister, and the draft order will proceed according to the highest level of scrutiny required by either committee.

Compliance Code * Proposals

Contents

The Bill contains the following:

- a provision codifying general regulatory principles
- a power to make a Code of Practice which will put the Code onto a statutory footing
- a power to list the regulatory functions covered by the Principles and the Code

Definition of regulatory functions

The listing order can specify any function that imposes requirements, or relates to the securing of compliance with requirements, over any activity.

Exclusions

The listing order cannot list:

- devolved functions (though it can list reserved functions exercised in Scotland, Wales and Northern Ireland)
- functions exercised by the police, economic regulators (as listed in the Bill), and certain prosecuting authorities.

Parliamentary scrutiny

- Before a Minister makes a listing order, he must consult with the authorities whose functions are being listed, and with other relevant parties. Both Houses of Parliament must then approve the order.
- Before the Minister issues or revises a Code of Practice, he must consult with regulators and other interested parties, and then lay the draft Code before Parliament for 40 days.

* The Compliance Code is a revised version of the Enforcement Concordat.