Consultation on changes to the Local Government Act 1972

Amending the Local Government Act 1972 to allow local authorities in England to work together on animal health

25 July 2008
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Summary of Proposals

Local authorities (LAs) cannot currently delegate work on animal health activities to other LAs, which is a clear obstacle to efficient and effective delivery. This problem is a result of legislation which prevents the delegation of animal health activities from one local authority to another. This differs from other work areas, where LAs are permitted to arrange for another LA to carry out work on their behalf.

We propose to bring the law on animal health activities into line with the rest of policy areas across government. This will allow those LAs who wish to invite other LAs to carry out animal health activities on their behalf to do so. We expect this to reduce the overall cost of providing such activities through economies of scale. It may increase effectiveness as LAs with less animal health work could benefit from others’ greater expertise and experience.

In a recent consultation¹, respondents on this point unanimously supported removing legal barriers to cross LA boundary work on animal health. This change will allow LAs to make a choice on how they deliver animal health services to meet the needs of the local community. We therefore propose to remove the legal obstacle.

We intend that the proposed changes to legislation are made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. Subject to the outcome of consultation, we propose that the changes are implemented in 2008.

The response form for this consultation is split into two sections. The first examines whether an LRO is the best way to achieve the objective of removing the legal barrier to local authorities working together across boundaries on animal health. The second section asks specific questions of local authorities to help us finalise our impact assessment.

This consultation is being made in accordance with the requirements of the Legislative Regulatory Reform Act 2006 and the terms of the Government’s Code of Practice on Written Consultations².

All responses should be received by 17 October 2008.

¹ http://www.defra.gov.uk/animalh/ahws/deliver/review.htm
² http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html
Chapter 1: Introduction

This consultation paper sets out the Government’s proposals for reforming the legislation governing the ability of local authorities to arrange for another local authority to discharge their obligations regarding animal health.

Local authorities cannot delegate work on animal health activities to other local authorities as a result of a prohibition in the Local Government Act 1972 preventing the delegation of animal health related functions from one local authority to another. This is a clear obstacle to efficient and effective delivery. Government intervention is necessary to amend the legislation to allow LAs to arrange for the discharge of their animal health functions by other (and in some cases, better equipped) local authorities.

In all other policy areas apart from animal health, local authorities are permitted to arrange for another local authority to carry out work on their behalf. The policy objective is therefore to ensure the law allows the delegation of animal health activities just as it allows the delegation of functions in other policy areas across government. The effect will be to allow those local authorities who wish to invite other local authorities to carry out animal health activities on their behalf to do so. This change will allow local authorities to make a choice on how they deliver animal health activities to meet the needs of the local community.

We propose to introduce the reform by means of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006 (LRRA). This consultation is being conducted in accordance with the provisions of section 13 of the LRRA. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out in the response form attached to the document.

Legislative Reform Order-Making Powers

What can be delivered by Legislative Reform Order?

Section 1

Under section 1 of the LRRA a Minister can make an LRO for the purpose of ‘removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation’.

Section 1(3) of the LRRA defines a ‘burden’ as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity

Section 2

Under section 2 of the LRRA a Minister can make an LRO for the purpose of securing that regulatory activities are exercised in a way that is transparent,
accountable, proportionate, consistent, and targeted only at cases in which action is needed.

‘Regulatory functions’ is defined in section 32 as:
• a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
• a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

Preconditions

Each proposal for a LRO must satisfy the preconditions set out in section 3 of the LRRA. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions.

For this reason, we would particularly welcome your views on whether and how each aspect of the proposed changes in this consultation document meets the following preconditions:

• **Non-Legislative Solutions** - An LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.

• **Proportionality** - The effect of a provision made by an LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making an LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.

• **Fair Balance** - Before making a LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make an LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.

• **Necessary protection** - A Minister may not make an LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.

• **Rights and freedoms** - An LRO cannot be made unless the
Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people using an LRO.

- **Constitutional Significance** - A Minister may not make an LRO if he considers that the provision made by the LRO is of constitutional significance.

It should be noted that even where the preconditions of section 3 of the LRRA are met, an LRO cannot:

- Deliver ‘highly controversial proposals;
- Remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
- Confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- Impose, abolish or vary taxation;
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- Provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- Amend or repeal any provision of Part 1 of the LRRA;
- Amend or repeal any provision of the Human Rights Act 1998;
- Remove burdens arising solely from common law.

**Devolution**

The LRRA imposes certain restriction regarding LROs and the devolution agreements:

- Scotland – A Minister cannot make an LRO under Part 1 of the LRRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an LRO under Part 1 of the LRRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.
Consultation

The LRRA requires Departments to consult widely on all LRO proposals. The list of consultees, including the devolved administrations, to whom this document has been sent, is available online. The consultation is also available on the Internet at:


Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at Annex A. The form is split into two sections. The first examines whether an LRO is the best way to achieve the objective of removing the legal barrier to local authorities working together across boundaries on animal health. The second section is for local authorities, and asks specific questions to help us finalise our impact assessment.

A note explaining the Parliamentary process for LROs to be made under the LRRA can be found at Annex B. This will help consultees understand when and to whom they are able to put their views should they wish to do so.

This consultation document follows the format recommended by the BRE for such proposals. The criteria applicable to all UK public consultations under the BRE Code of Practice on Consultation³ are set out at http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html.

Disclosure

Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the LRRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.

³ http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html
In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form of Annex A.

Confidentiality and Freedom Of Information

It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.

RESPONDING TO THE CONSULTATION DOCUMENT

Any comments on the proposals in this consultation document should be sent by 3 October at the latest to: LRO.consultation@defra.gsi.gov.uk

You may prefer to reply via post to:

Rhys Jackson
Agency Relationship Team
Department for Environment, Food and Rural Affairs
Area 5E, 9 Millbank
c/o 17 Smith Square
London SW1P 3JR
Tel: 0207 238 6802
Fax: 0207 238 3177

from whom further copies of this document may also be obtained.
This consultation has been prepared in line with the Government’s code of practice
(http://www.cabinetoffice.gov.uk/regulation/consultation/code/criteria.asp)

Complaints or comments relating to the consultation process should be sent to:
   Marjorie Addo
   Consultation Co-ordinator
   Defra
   Area 7C Nobel House
   17 Smith Square
   London SW1P 3JR
   or can be emailed to consultation.coordinator@defra.gsi.gov.uk.
Chapter 2: Background to the policy and legislation at issue

In England, county councils, unitary authorities and metropolitan borough councils are responsible for the enforcement of animal health and welfare legislation relating to farmed animals. Such legislation covers the movement and identification of livestock, animal by-products, bio security, disease prevention and contingency, controls at animal gatherings and animal welfare. Local authorities carry out a range of activities to fulfil this role, including providing proactive business advice, farms visits, presence at livestock markets and other animal gatherings, visits to slaughterhouses, visits to ports and checks during transportation. Activities are risk based and are carried out in consideration of national priorities, local circumstances and intelligence.

Animal health activities carried out by local authorities are funded primarily through the Revenue Support Grant. In addition to this, since 2001 there has been direct funding available from Defra to local authorities to supplement the resources available to them for work on animal health and welfare. In 2007/08 the budget for this was £8.5m.

Animal health was described as a national enforcement priority for local authority regulatory services in the Rogers Review\(^4\). Whereas local authorities (LAs) in England can arrange for nearly all of their functions to be delegated to other local authorities, they are currently prevented from arranging for another local authority to carry out their animal health activities. LAs with low demand for animal health work have to maintain resources for dealing with matters when they arise, rather than being able to seek assistance from LAs with more experience and/or specific resources. For some local authorities this is not only an administrative inconvenience, but a clear obstacle to efficient and effective delivery. It can also pose a financial burden. We now seek to remove it.

Section 101 of the Local Government Act 1972 (LGA) provided that local authorities in England could arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority. However, subsection 7 states that this does not apply to any of their functions under the Diseases of Animals Act 1950. The Diseases of Animals Act 1950, Section 67 stated that as a general rule local authorities should only carry out enforcement for their own area “unless otherwise expressed”. Section 68 set out circumstances in which local authorities could delegate the performance of activities to the neighbouring local authority. The 1950 Act was repealed in its entirety by the Animal Health Act 1981 (AHA) which further consolidated animal health legislation. However, whereas Section 67 was replicated in the LGA, Section 68 was not replicated in the LGA or the AHA. This has resulted in LAs not being able to delegate animal health activities due to there being no exemptions to the prohibition against delegation in the LGA.

We believe this to have been the result of a legislative oversight rather than a positive decision to exclude animal health activities. In any event we think it

appropriate to permit a local authority to arrange for the discharge of its animal health activities by another local authority in the same manner as it can for any other function.

In June 2006, Defra published the Eves review\(^5\) of the roles, responsibilities and relationships of the bodies that deliver and enforce animal health and welfare policies. The independent review assessed how effective the delivery landscape was and made recommendations on where improvements could be made. One of Eves’ recommendations was that legal obstacles to cross border working between LAs should be removed.

Defra’s response to the review was published for public consultation from 14 July to 12 October 2007, in which we agreed with this recommendation. All of the replies we received on this agreed with our seeking to pass the necessary legislation to remove such legal obstacles\(^6\).

\(^5\) [http://www.defra.gov.uk/animalh/ahws/deliver/review.htm](http://www.defra.gov.uk/animalh/ahws/deliver/review.htm)

Chapter 3: The proposal

The burden described above is a result of a provision in primary legislation. The Legislative and Regulatory Reform Act 2006 (LRRA) includes order-making powers which a Minister may use to amend primary legislation in certain circumstances. The LRRA allows a Minister to make a Legislative Reform Order (LRO) for the purpose of removing or reducing burdens.

We propose to use an LRO to repeal Section 101(7) of the LGA, to ensure that local authorities can delegate animal health activities in the same way that they delegate other activities to each other. This will remove the legal obstacle and thus the burden.

We also propose to repeal Section 101(7A) of the LGA which exempts Welsh principal councils from the prohibition in Section 101. Section 101(7) was introduced into the LGA by the Local Government (Wales) Act 1994, but will need to be repealed along with Section 101 to ensure legislative clarity. This will not have any effect on Wales, as principal councils are currently allowed to delegate animal health functions to each other, and will continue to be able to delegate those functions to each other once the prohibition in Section 101(7) is repealed.

The LRO will not introduce any additional burdens as local authorities will only carry out animal health activities for other local authorities on a voluntary basis. The order will not require local authorities to discharge activities for which they do not already have responsibility, nor require them to pass those activities to other local authorities unless they choose to do so.

As this is an enforcement matter, people who comply with animal health legislation should not be adversely affected since the regulatory requirement on them will not change. The public interest will be served by ensuring that local authorities that specialise in, or are best equipped for, carrying out certain animal health functions are able to deliver cross local authority boundary animal health services, rather than having to rely on a local authority that may be ill equipped. This should provide a more efficient and effective way of working, allowing local authorities to focus their resources on the needs of their local communities. It is also likely to make costs savings for certain local authorities. We therefore feel the balance is firmly in favour of the public interest.

Extent

The LRO is required to effect policy change in England although it will repeal Section 101(7A) of the LGA which exempts Welsh principal councils from the prohibition in Section 101(7). This change, while it amends legislation which applies to England and Wales, will not affect the practical position in Wales. The Welsh Assembly Government has been consulted and is content for this change to be made.

Related Controversial Issues
There are no controversial issues.

**Binding the Crown**  
The proposal will not bind the Crown.

**Possible Parliamentary Procedure**

The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution procedure is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

**Negative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.

**Affirmative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.

**Super-Affirmative Resolution Procedure** – This is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister.

This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.

If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, he must lay a statement. After 15 days, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.

If the Minister wishes to make material changes to the draft LRO he must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament.

Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary
Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

The Department for Environment, Food and Rural Affairs believes that the negative resolution procedure should apply to this LRO. This is because the LRO will deliver a small regulatory reform which already has support from an independent review as well as stakeholders and is very unlikely to be controversial. It does not change the nature of animal health activities nor the obligation of local authorities to carry them out. It merely makes the exercise of those functions easier.
Chapter 4: Legal analysis against requirements of the Legislative and Regulatory Reform Act 2006

1. **Non-Legislative Solutions**
   There are no non-legislative solutions as the problem results from a statutory prohibition in primary legislation. Lawyers advise that the prohibition cannot be removed without legislative change.

2. **Proportionality**
   'Delivering and enforcing animal health and welfare standards effectively' is a key theme of the Animal Health and Welfare Strategy for GB. Repealing s101(7) of the LGA should increase the efficiency and effectiveness of delivery and enforcement, as local authorities with more experience and/or specific resources will be able to assist less experienced/smaller local authorities. As there is no other means by which this can be achieved, the effect of the repeal - which will not affect the nature of animal health functions nor a local authority’s obligation to exercise them - is proportionate to the policy objective.

3. **Fair Balance**
   As this is an enforcement matter, people who comply with animal health legislation should not be adversely affected since the regulatory requirement on them will not change; the public will continue to receive the same animal health services from local authorities (and may experience in some cases a higher standard where more experienced local authorities step in to carry out certain functions on behalf of those with less experience). We therefore feel the balance is firmly in favour of the public interest.

4. **Necessary protection**
   We do not feel that any necessary protections will be removed as the only change will be that certain local authorities will be exercising activities on behalf of another. Local authorities currently delegate other activities without any consequent loss of necessary protections.

5. **Rights and Freedoms**
   As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom.

6. **Constitutional Significance**
   The provisions are not constitutionally significant.

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ANNEX A: RESPONSE FORM

RESPONSE FORM FOR THE CONSULTATION PAPER ON CHANGES TO THE LOCAL GOVERNMENT ACT 1972

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<tr>
<th>Respondent Details</th>
<th>Please return by 17/10/08 to:</th>
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<tbody>
<tr>
<td>Name:</td>
<td><a href="mailto:LRO.consultation@defra.gsi.gov.uk">LRO.consultation@defra.gsi.gov.uk</a></td>
</tr>
<tr>
<td>Organisation:</td>
<td>Rhys Jackson</td>
</tr>
<tr>
<td>Address:</td>
<td>Agency Relationship Team</td>
</tr>
<tr>
<td>Town/City:</td>
<td>Department for Environment, Food and Rural Affairs</td>
</tr>
<tr>
<td>County/Postcode:</td>
<td>Area 5E, 9 Millbank</td>
</tr>
<tr>
<td>Telephone:</td>
<td>c/o 17 Smith Square</td>
</tr>
<tr>
<td>Fax:</td>
<td>London SW1P 3JR</td>
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<tr>
<td>E-mail:</td>
<td>Tel: 0207 238 6802</td>
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<td>Fax: 0207 238 3177</td>
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Are you requesting non-disclosure of your response? [ ]

Section A: is an LRO appropriate in this case?

a) Do you think the proposals will remove or reduce burdens as explained in Chapter 3?

Comments: 
b) Do you have views regarding the expected benefits of the proposals as identified in Chapter 3 of this consultation document and addressed in the partial Impact Assessment attached at Annex C?

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c) If there is any empirical evidence that you are aware of that supports the need for these reforms, please provide details here.

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d) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?

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<td><strong>e)</strong> Are the proposals put forward in this consultation document proportionate to the policy objective?</td>
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<td><strong>f)</strong> Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?</td>
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<td><strong>g)</strong> Do the proposals put forward in this consultation document remove any necessary protection?</td>
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h) Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in Chapter 4? If so, please provide details.

Comments:

i) Do you consider the provisions of the proposal to be constitutionally significant?

Comments:

j) Do you agree that the proposed Parliamentary resolution procedure (as outlined in Chapter 3) should apply to the scrutiny of this proposal?

Comments:
**Section B: Questions for Local Authorities**

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<th><strong>a) Would your authority be interested in performing animal health activities for another authority?</strong></th>
<th>If so, what type of activities do you expect to perform and what proportion of the other authorities animal health workload do you expect this would represent?</th>
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<th><strong>b) Would your authority be interested in arranging for another local authority to carry out animal health activities on your behalf?</strong></th>
<th>If so, what type of activities do you expect would these be and what proportion of your animal health workload do you expect this would represent?</th>
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c) If you answered yes to question b, what is the current cost of performing those animal health activities that you would consider contracting out?

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d) If you answered yes to question a, could you estimate an approximate charge for performing animal health activities on behalf of another authority?

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e) Please give details of any perceived benefit in performance through consolidating the expertise and experience in animal health activities.

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Annex B: Legislative Reform Orders - Parliamentary consideration

Introduction
1. These reform proposals in relation to local authority animal health work will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to local authority animal health work as measures that might be carried forward by a LRO.

Legislative Reform Proposals
2. This consultation document on local authority animal health work has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

i) Explain under which power or powers in the LRRA the provisions contained in the order are being made;

ii) Introduce and give reasons for the provisions in the Order;

iii) Explain why the Minister considers that:

- There is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- The effect of the provisions are proportionate to the policy objective;
- The provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- The provisions do not remove any necessary protection;
• The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
• The provisions in the proposal are not constitutionally significant; and
• Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

v) Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the BRE’s website at:

http://bre.berr.gov.uk/regulation/reform/bill/

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

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

(b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
(c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secure a policy objective which could not be satisfactorily secured by non-legislative means;

(e) have an effect which is proportionate to the policy objective;

(f) strike a fair balance between the public interest and the interests of any person adversely affected by it;

(g) do not remove any necessary protection;

(h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) are not of constitutional significance;

(j) make the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) have been the subject of, and takes appropriate account of, adequate consultation;

(l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;

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

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at

- Regulatory Reform Committee in the Commons; and
- Delegated Powers and Regulatory Reform Committee in the Lords.
10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document (in this case, Rhys Jackson, Defra). When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and Regulatory Reform Committee
Regulatory Reform Committee
House of Commons
House of Lords
London
SW1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571
dprr@parliament.uk

mailto:dprr@parliament.uk
mailto:regrefcom@parliament.uk
Non-disclosure of responses

17. Section 14(3) of the LRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent 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 your anonymity and that of any third party involved.

Information about Third Parties
19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, 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. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Better Regulation Executive
Department for Business, Enterprise and Regulatory Reform