



Memorandum to the Business Innovation and Skills Committee

Post Legislative Assessment of the Legislative and
Regulatory Reform Act 2006



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Presented to Parliament

by the Secretary of State for Business Innovation and Skills

by Command of Her Majesty

November 2014



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Memorandum to the Business, Innovation and Skills Committee on Post Legislative Assessment of the Legislative and Regulatory Reform Act 2006

Introduction

1. This memorandum provides a preliminary assessment of the Legislative and Regulatory Reform Act 2006 and has been prepared by the Department for Business, Innovation and Skills for submission to the following committees: the Business, Innovation and Skills Select Committee; the Regulatory Reform Committee and the Delegated Powers and Regulatory Reform Committee, in accordance with Chapter 41 of the 'Cabinet Office Guide to Making Legislation' published July 2014¹
2. The Legislative and Regulatory Reform Act 2006 (the Act) replaced the Regulatory Reform Act 2001 and was in response to a review of the operation of the 2001 Act, and recommendations made by the Better Regulation Task Force in their report 'Less is More: Reducing Burdens, Improving Outcomes' published in 2005.
3. The overall aim of the Act is to remove or reduce burdens from legislation, promote regulatory principles, make provision about the exercise of regulatory functions and make provision about the interpretation of legislation relating to the European Communities and European Economic Area.
4. There are three main Parts to the Act. Part 1 provides powers to make orders to remove or reduce burdens from legislation. Part 2 provides power to promote regulatory principles and is intended to promote more effective inspections and enforcement by regulators and ensure that they exercise their functions in a way that is consistent and proportionate. It sets out statutory principles which inform the Regulators Code.
5. Part 3 provides provision for domestic legislation which refers to Community instruments such as directives or regulations. This section is designed to make the drafting of domestic instruments simpler.²
6. Part 1 of the Act works by allowing changes to primary legislation to be made by a special type of statutory instrument called a Legislative Reform Order (LRO). LROs may only be used to remove or reduce a burden arising from legislation. The proposed change must be subject to consultation and an Explanatory Memorandum prepared by the Department responsible for the Order. Under Parliamentary Standing Orders, LROs are scrutinised by two Parliamentary Committees - the

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328408/Guide_to_Making_Legislation_July_2014.pdf

² <http://www.legislation.gov.uk/ukpga/2006/51/notes/division/5/3/2>

Regulatory Reform Committee and the Delegated Powers and Regulatory Reform Committee - to ensure that the proposed LRO meets the criteria set out in the Act.

7. The Committees also consider the procedure (negative, affirmative or super-affirmative) that is being recommended by the Department for the scrutiny of the LRO; assess its appropriateness; and either accept the proposed procedure or recommend that a more lengthy procedure is applied, which is binding. The Committees' assessments of the LRO are published after 40 or 60 days depending on the scrutiny process used, the LRO is then – again dependent on the process used:
 - a. Laid and made if not prayed against
 - b. Debated in Parliament followed by a motion to agree
 - c. Amended in line with the Committees' comments, with a final draft being submitted for further consideration by the Committees, followed by their recommendation, a debate and motion to agree.

8. A LRO has to meet six criteria to be deemed suitable, which are set out in the legislation. The LRO is scrutinised against these criteria by each of the Committees. The DPRCC also looks to ensure that delegated powers are being correctly applied. The six criteria are that:
 - (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; and
 - (f) the provision is not of constitutional significance

9. The Act provides three scrutiny procedural options to allow the scrutiny to be tailored to the content and complexity of the LRO. During the scrutiny period the Committees may seek further information from the department or take expert advice.

10. Where an Order is laid under the *negative* procedure the Committee have 40 days to consider if it meets the criteria set out in the LRA and is suitable. Within the first 30 of those 40 days, the Committees can recommend that a more rigorous procedure is followed. At the end of the 40 days the Committees set out their reasons for approving or not approving the LRO and where applicable recommending an enhanced scrutiny process. If approved the LRO is laid in Parliament and will come into force if it is not prayed against.

11. An Order laid under an *affirmative* procedure follows the same route, but will then be debated in both Houses, followed by a motion to approve the order.
12. An Order laid under a *super affirmative procedure* takes 60 days. After 60 days the Committees report their findings and state either that :
 - The LRO should be laid before the house for final scrutiny
 - The LRO is amended before it is laid in draft before parliament or
 - That the LRO should not be proceeded with.

Summary of the Objectives of the Act

13. The objectives of the Act are to make provision:
 - for removing or reducing burdens from legislation and promote regulatory principles;
 - about the exercise of regulatory functions;
 - about the interpretation of legislation relating to the European Communities and the European Economic Area; to make provision relating to section 2(2) of the European Communities Act 1972³.
14. The Act extends to the whole of the UK, but Orders may not make provisions within the Scottish Parliament or repeal or amend any Northern Ireland legislation. An Order cannot make any provision on conferring, modifying or removing a function of the Welsh Assembly except with the agreement of the Welsh Assembly.

From the Explanatory Notes to the Legislative and Regulatory Reform Act⁴

15. The Act contains three parts. Part 1, Section 1 of the Act confers power on a Minister of the Crown to make any provision by Order to remove or reduce a burden to which any person is subject as a direct or indirect result of any legislation. A burden is defined as a financial cost, an administrative inconvenience, an obstacle to efficiency, productivity or profitability or a sanction which affect the carrying on of any lawful activity.
16. Section 2 provides power to promote regulatory principles. A minister of the Crown may make an order to ensure that regulatory functions are exercised to comply with principles of good regulation. These are that regulatory activities should be carried out in a way that is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

³ <http://www.legislation.gov.uk/ukpga/1972/68/contents>

⁴ <http://www.legislation.gov.uk/ukpga/2006/51/notes/contents>

17. Part 2 of the Act, covers regulators and the exercise of regulatory functions. Regulatory activities must be carried out in a way which is transparent, accountable, proportionate and consistent. They should be targeted at cases in which they are needed. Section 22 enables a Minister of the Crown to issue and revise a Code of Practice relating to the exercise of regulatory functions. A regulatory Code of Practice was first issued in 2008 and was revised in 2014.
18. Part 3, section 25 makes provision about domestic legislation which refers to EEC (EU) regulations and directives. It is designed to make drafting of domestic regulations simpler. Section 27 enables the power under European Communities Act 1972 to be exercised when making and order, rules or a scheme. Section 28 provides a power to make ambulatory references to Community Instruments

Implementation of the Act

19. The Act received Royal Assent on 8 November 2006 and came into force on the 8 January 2007, replacing the Regulatory Reform Act 2001. The first Legislative Reform Order (LRO) was made on 17 November 2008. All the provisions were brought into effect at commencement.

Secondary legislation and guidance

20. A table listing the secondary legislation made under the Act is in Annex A. To date 23 LROs have been made, and one is currently in Parliament. Annex B contains a list of the Legislative Reform Orders that have been made and provides details of the Order, including quantified savings from Impact Assessments (IAs) where they have been provided, the Act(s) they amended and the department that laid them.
21. The Act was accompanied by a detailed explanatory note and guidance was issued to help officials assess if the measure they are proposing is suitable for an LRO, and take them through the steps of the LRO process. The original guidance was revised, shortened and reissued in January 2013, and a quick start guide was produced to help provide an overview of the process.⁵
22. The Local Better Regulation Office published a guide on the differences between the Regulators Compliance Code and the voluntary Enforcement Concordat in March 2008⁶ to help Local Authorities.
23. The Better Regulation Delivery Office has produced a range of resources and tools to support regulators with the new Regulators code. Including Frequently Asked Questions and a tool kit to help them meet the transparency requirements.⁷

⁵ Legislative Reform Orders guide for policy officials <https://www.gov.uk/government/publications/legislative-reform-orders-guide-for-policy-officials>

⁶ <http://www.lbro.org.uk/docs/regulators-compliance-code.pdf>

⁷ <http://www.regulatorsdevelopment.info/grip/regulatorscode>

Legal Issues

24. No legal issues have arisen with the Legislative and Regulatory Reform Act 2006.
25. There were however concerns with the initial draft bill. The House of Commons Select Committee on Regulatory Reform, the House of Lords Constitution Committee and the House of Lords Delegated Powers and Regulatory Reform Committee, raised concerns about the initial drafting of the Legislative and Regulatory Reform Bill. These concerns were reported in the media. In particular, the powers to amend and repeal legislation were held to be too wide and not sufficiently well defined, with further concerns about the potential use of the proposed powers to amend the Bill/Act itself and other constitutional Acts.
26. In response to this the Government amended Bill.
- The order-making power in Part 1 was restricted and focused on better regulation to ensure that under the Act a Minister may only amend legislation which removes or reduces a burden or which brings regulatory activity in line with better regulation principles (These principles are that inspection should be transparent, accountable, proportionate, consistent and targeted where action is needed).
 - Section 3 sets out a number of conditions that an order has to meet and 2 (f) in Section 3 prevents an order being used for amendments of constitutional significance.
 - A statutory veto over orders was given to the relevant Committees of either House of Parliament allowing them to recommend that an order not be made, although this could be overturned on the floor of the house. There were discussions on defining criteria for when the veto could be used, but these were not imposed.
27. There continued to be concerns that the Act would be used for controversial measures. To allay these concerns the government of the day gave two non-statutory undertakings:
- Orders will not be used to implement highly controversial reforms
 - that they will not be forced through the Committees of this House⁸
28. To address concerns about amendments to the Act being made by an order under the Act, the order-making power was restricted, and cannot be used to amend Part 1 of the Act itself or the Human Rights Act 1998.

Reviews Touching on the LRRRA 2006

29. There have been no formal reviews of the LRRRA 2006 section 1.

⁸ Hansard 9 Feb 2006: Column 2058-9 <http://www.parliament.the-stationery-office.co.uk/pa/cm200506/cmhansrd/vo060209/debtext/60209-20.htm>

30. The Delegated Powers and Regulatory Reform Committee did however refer to the LRA 2006 in their ‘Special Report: Strengthened Statutory Procedures for the Scrutiny of Delegated Powers’⁹ published on 12 June 2012. This looked at the use of delegated powers in different pieces of legislation including the LRA 2006. Overall the Committee welcomed

‘ the existing statutory procedures described in this Special Report in that they provide Parliament with an enhanced role’

The Regulators Compliance Code

31. Section 22 of Part 2 of the LRA 2006 makes provision for a statutory code of practice concerning the exercise of regulatory functions. A code entitled the Regulators Compliance Code (RCC) was first published in 2008 in accordance with this provision. The RCC governs approaches to enforcement by non-economic regulators. Its role is to guide regulators’ policy and behaviour to ensure that they follow the principles of good regulation.

32. The 2012 post implementation review of the RCC¹⁰ found that the principles of the Code were sound and that they had been largely adopted by regulators with many instances of good regulatory delivery. However, the review found that delivery against the provisions of the Code was inconsistent and it had not delivered its objectives to embed a change in regulatory culture and practice.

33. The Government consulted in 2013 on a revised Code, entitled the Regulators’ Code which provides a framework that can address the issues identified, promoting transparency and accountability and ensuring that regulatory enforcement is properly focused on supporting business compliance and growth. The revised Regulators’ Code came into statutory force in April 2014.¹¹

Preliminary assessment of the Act

Part 1 – Legislative and Regulatory Reform Orders

34. The main aims of the Part 1 of the Act are to remove or reduce burdens from legislation and promote regulatory principles.

35. A burden is defined in the Act (1 (3)) as a financial cost, an administrative cost, an obstacle to efficiency or productivity or a sanction which affects the carrying on of any lawful activity. This is a broader definition than in the predecessor 2001 Act¹².

⁹ <http://www.publications.parliament.uk/pa/ld201213/ldselect/lddelreg/19/1902.htm>

¹⁰ <https://www.gov.uk/government/consultations/amending-the-regulators-compliance-code>

¹¹ <https://www.gov.uk/government/publications/regulators-code>

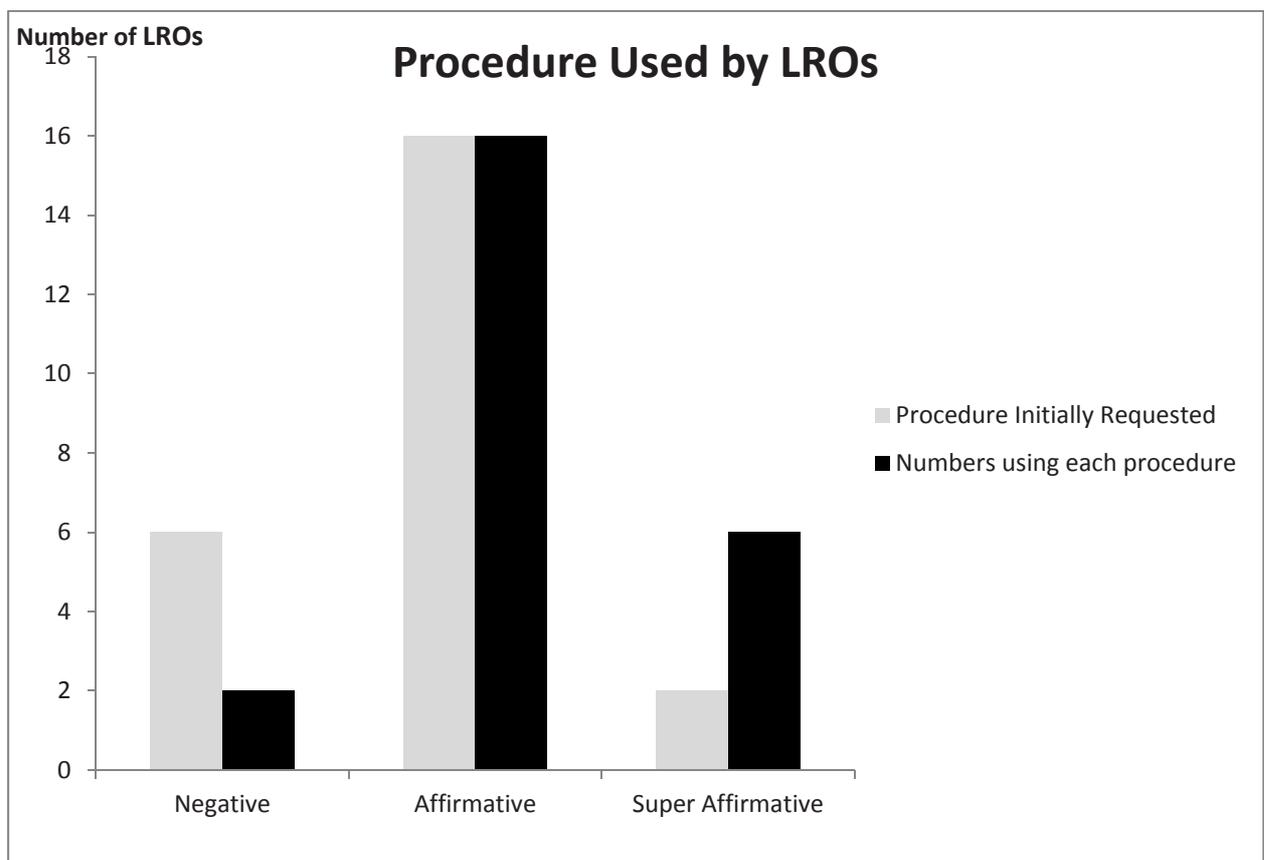
¹² <http://www.legislation.gov.uk/ukpga/2001/6/contents>

36. Questions around proving that a measure removes an administrative or a financial burden that impacts on business have not been raised by policy officials. The Committees reports on LROs have not highlighted any concerns that measures being put forward are not removing a burden.
37. There have to date been 24 Orders made under Part 1 of the Act covering a wide range of subject areas. 13 have removed a burden on business and 11 have removed an administrative burden.
38. Individual savings achieved in terms of reducing a financial cost range from £0.45m for changes to the Veterinary Surgeon's Act to £208m for the changes to the Insolvency Act, indicating that LROs have been used to both deliver major changes and smaller but still significant ones. The savings have been calculated under different Impact Assessment methodologies and costed over different periods so it is not possible to aggregate them and give an overall figure. The figures, where available are listed in Annex B.
39. A number of LROs have also produced administrative changes which cannot often be quantified. The Clinical Commissioning Group LRO estimated savings of £17m in administrative changes, while changes to Overseas Registration of Births and Deaths and the Annual Review of Local Authorities also identified administrative changes but did not provide an estimate of savings.
40. Under the Regulatory Reform Act 2001, 28 Regulatory Reform Orders were made but the savings were not quantified. The Impact Assessment for the Legislative and Regulatory Reform Bill did not quantify the expected savings. Substantial savings were expected from the implementation of Departmental Simplification Plans, and it was envisaged that some of these measures would be delivered by LROs.
41. The IA for the Bill also envisaged that LROs would be easier and hence more frequently used than RROs. Between 2001 and 2006, 28 RROs were made compared to 24 LROs being made between 2007 and 2014. The initial post legislative review due in 2012 of the LRA 2006 was delayed in part because of the small number of LROs at that point on which to draw evidence.
42. Take up of LROs has not been as high as might have been expected. Taking an LRO through Parliament is resource intensive and it is easier to rely on being part of a wider Bill team to deliver deregulatory measures through a Bill, where that option is available.
43. There have been a number of deregulatory Bills in this parliament, including the Enterprise and Regulatory Reform Act 2013, the Deregulation Bill, the Infrastructure Bill and the Small Business, and Enterprise and Employment Bill. These contain measures that could have been delivered through Legislative Reform Orders. Some measures which started as Legislative Reform Orders are now going through as part of the Deregulation Bill e.g. changes to Satellite Insurance. The Act has none the less been useful for measures that needed to be delivered but were unable to be included in a bill and it has delivered a number of significant deregulatory reforms in terms of value.
44. The majority of LROs laid by departments have been successful. The main area where the Committees have not been satisfied that departments have met the requirements and have

required further evidence has been around the removal of protection and, more rarely the exercise of a right of freedom. In these cases the Committees have usually increased the scrutiny procedure to super affirmative and requested more information or amendments from the Department laying the LRO. In all cases but one the Departments have managed to address the Committees' concerns and make the LRO.

Scrutiny Procedures

- 45. The three scrutiny procedures resulted from a particular amendment to the LRA to allow the scrutiny procedure to be tailored to the complexity of the change being proposed. The LRA 2001 only had a super affirmative procedure, which the Government believed was disproportionate for small technical changes. The scrutiny procedures differ in the amount of time that each is considered for by the committees, and if they then need to be debated.
- 46. Either Committee can independently recommend that a more stringent procedure is used, but not a lesser one. The Committees do not need to be in agreement, and it is the higher scrutiny procedure that will then apply.
- 47. The table on the next page shows the numbers of LROs going through each procedure and which procedure they were laid under.



48. From the graph it can be seen that relatively few measures go through under the negative procedure, despite one in four being laid as such, while the majority will go under an affirmative procedure. Very few measures are laid under super affirmative route, but after consideration by the Committees; one in four eventually uses this route.
49. The Committees restrict the use of the negative route for technical and minor changes. Only two have been successful in using this route, the Parish Payments LRO and the Animal Health LRO.
50. The Committees' usual reason for increasing the scrutiny procedure is because an Order involves a policy change, rather than just a technical amendment, and should therefore be debated.
51. There have also been some occasions where the Committees have accepted that a measure is minor and technical but have increased the scrutiny procedure to enable a debate to take place. This tends to occur where the Committees believe the area is of wider parliamentary interest or is contentious.¹³ Measures connected with licensing such as the Reform (Licensing) (Interim Authority Notices) Order 2010¹⁴ are also likely to have their scrutiny increased.
52. Most LROs laid under the negative procedure have had their scrutiny procedure increased to the affirmative one. One was however increased to super affirmative, because of concerns around removal of protections.
53. The majority of LROs as already stated are laid under the affirmative procedure. The Committees increased the scrutiny of 3 LROs laid under the affirmative procedure to super affirmative. This was either to allow amendments to be made, or to allow longer time and consideration for the measure.
54. Reviewing the recommendations on scrutiny procedure reveals that one third of LROs (i.e. 8) had their scrutiny procedure increased. In half of these cases it was by both committees, for the remaining measures it tended to be mainly the Delegated Powers and Regulatory Reform Committee that increased the procedure. The reasons given for increasing the procedure from negative to affirmative were mainly because of the subject of the LRO, or because it was a policy change and not just a technical amendment, or impacted on a large number of people.
55. Overall the provision of three scrutiny procedures, rather than the single super affirmative procedure has been beneficial in that it has allowed most LROs to go through as affirmative rather than super affirmative route. This means it that scrutiny is more proportionate and tailored to the measure and allows a quicker route through parliament than under the previous RRO regime, although relatively few measures have so far used the negative procedure.

¹³ <http://www.publications.parliament.uk/pa/ld200910/ldselect/lddelreg/106/10603.htm#a6>

¹⁴ <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmdereg/507/50707.htm>

Consultation Requirement

56. To make an LRO a consultation has to be carried out along the lines of Part 1 (13) of the LRRRA set out below

1) If a Minister proposes to make an Order under this Part he must —

(a) consult such organisations as appear to him to be representative of interests substantially affected by the proposals; .

(b) where the proposals relate to the functions of one or more statutory bodies, consult those bodies, or persons appearing to him to be representative of those bodies; .

(c) consult the Welsh Ministers where the proposals, so far as applying in or as regards Wales, relate to any matters in relation to which the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government exercise functions (and where the agreement of the Welsh Ministers is not required under section 11)] .

(d) in such cases as he considers appropriate, consult the Law Commission, the Scottish Law Commission or the Northern Ireland Law Commission; and .

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

57. The consultation process is a key part of making an LRO. It allows the relevant Department to demonstrate that there is support and acceptance of what they propose, and the Committees to assure themselves of this. The consultation is used as a basis for gathering information to show that the criteria listed in Section 13 are being met.

58. The consultation process is usually seen as fairly straightforward. It is something that the Committees look at closely and in two instances they have raised the adequacy of the consultation. For instance, the DPRRC challenged the openness of the Epping Forest LRO, consultation.

59. The consultation is a useful process in showing how controversial a measure is, and two LROs (on Street Works and Professional Qualifications) were not taken forward because the consultation responses revealed polarised opinions on the proposed measures.¹⁵

Use of the Veto

60. Sections 16 (4-5), 17 (4-5) and 18 (4-5) give the Committees the power to recommend that ‘the Minister not make an order in terms of the draft Order’ The Minister may not then make an order unless the recommendation is rejected by resolution in the relevant House of Parliament. The veto

¹⁵ <https://www.gov.uk/government/collections/street-works#consultations>

has only been used once, by the DPRRC for the Regulation of Providers of Social Work Services¹⁶, which was withdrawn.

Amendments to Legislation under 2 years old

61. The LRA (2006) also change the approach from the LRA(2001) by allowing amendments to Acts that are less than 2 years old, but this has not been greatly used. The table in Appendix B lists Acts that LROs have or are seeking to amend. A majority of amendments were to Acts from the 60s, 70s, 80s and the 2000s. The Clinical Commissioning Group LRO¹⁷ however, which amended the National Health Service Act 2006, aimed to correct a minor oversight in the changes made by the Health and Social Care Act 2012.

Timing

62. LROs are not generally considered by Departments as a quick route. Once they are laid in Parliament, the timeline is fairly clear, though parliamentary recesses can increase the time taken. Delays tend to occur at the point of analysis of consultation responses, dealing with issues identified in the consultation and drafting the impact assessment and legislative reform order. Having three potential scrutiny routes instead of just one super affirmative route has however made it quicker to get a negative or affirmative LRO through parliament.

63. The Better Regulation Executive provides updates to the Committees of upcoming LROs but does not track how long they take from start to finish. Anecdotal evidence from policy teams report that delays tend to arise because of pressures on policy, economic or legal resources. Often LROs are used for important but not high priority measures and so it becomes difficult getting access to particularly legal and economic resources in the face of other higher priority policies.

64. Delays can also be caused by the analysis of consultation responses, particularly if the number of responses is unexpectedly large such as in the case of the Parish Payments LRO¹⁸, or where they are complex and need to incorporate data such as the proposed Outer Space LRO¹⁹. In other cases the consultation responses or legal drafting has identified problems that need to be addressed, which if they involve legislation or responsibilities in another Department have not been easy to resolve. In a few guidance needed to be redrafted and this delayed the process.

65. Theoretical timings suggest that it should be possible to complete a LRO within nine months, but only a few have managed to do this. For most it will take eighteen months or longer.

¹⁶ <http://www.publications.parliament.uk/pa/ld201314/ldselect/lddelreg/49/4903.htm>

¹⁷ <http://www.legislation.gov.uk/uksi/2014/2436/contents/made>

¹⁸ <http://www.legislation.gov.uk/uksi/2014/580/contents/made>

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295769/gov-response-osa-consultation.pdf

66. The Better Regulation Executive is responsible for the guidance on LROs and provides support to policy officials including seminars and promotion events. It has made the guidance simpler and provided a quick start guide to make it easier to understand the LRO process and encourage their use.
67. LROs tend to be used as a last resort, when a measure needs to be brought in, but there are no Bills that it could fit into. Evidence from policy teams is that LROs work well when the team is properly resourced with access to legal and analytical support.

Part 2 – Regulators – Exercise of regulatory functions

68. Section 22 of the LRA 2006 makes provision for a Minister of the Crown to issue, and from time to time revise, a code of practice in relation to the exercise of regulatory functions. The Regulators' Compliance Code (RCC) came into statutory force in 2008 and established a regulatory framework to guide regulators' policy and behaviours to ensure that they follow the principles of good regulation. The Code drew upon the recommendations of the Hampton Review which had examined, in 2004-5, progress towards improving approaches to regulatory inspection and enforcement. The RCC included provisions in relation to:

- The impact of regulatory interventions on economic progress;
- Risk-based allocation of resources and regulatory activities;
- Provision of regulatory advice and guidance;
- The use and conduct of inspections;
- Information requirements;
- Compliance and enforcement actions; and
- Ensuring accountability.

69. A public consultation carried out in 2011 as part of the Government's Transforming Regulatory Enforcement strategy²⁰ included two questions about the RCC. Findings indicated that the profile of the Code was low, particularly amongst businesses, and that it lacked the power to transform the way in which regulation was delivered. In the light of these results, the Government committed to carrying out a post implementation review of the RCC to examine its potential to improve the transparency of regulators, and their accountability to businesses.

70. The 2012 post implementation review of the RCC identified many instances of good regulatory delivery and found that regulators had largely adopted the principles set out in the Code. However, less progress had been made in delivering against certain of these principles and, overall, the RCC had not delivered its objectives to embed a change in regulatory culture and practice. The

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31427/11-989-transforming-regulatory-enforcement-consultation.pdf

Government undertook a further public consultation 'Amending the Regulators' Compliance Code'²¹, proposing an updated Code entitled the Regulators Code (RC). Following widespread consultation, the revised code came into statutory force in April 2014.

71. The RC has retained much of the content of the RRC in terms of providing a framework which supports good regulatory delivery, in accordance with the statutory principles established by the LRA 2006. However, it has a greater emphasis than its predecessor on promoting a constructive two-way dialogue between regulators and those that they regulate, and on promoting transparency and accountability.
72. The Government is committed to making sure the Regulators Code is effective and has put in place a programme to raise the profile of the Code amongst regulators, businesses and others with an interest in this area. Support is being provided to the regulators to assist them in responding to the expectations set out in the Code. It is the Government's intention to monitor the Code's implementation and application, providing guidance where necessary.

Part 3 – Legislation Relating to the European Communities etc.

73. Part 3 of the Legislative and Regulatory Reform Act 2006 includes provisions addressing a number of issues connected with legislation concerning the European Union. In particular, section 25 makes the drafting of provisions referring to EU instruments easier by inserting provisions into the Interpretation Act 1978 and the Scotland Act 1998. This ensures that (unless the contrary intention appears) such references cover any amendments that have already been made to that instrument at the date on which the reference is made. This avoids the need to make potentially lengthy references to other instruments amending, extending or applying the EU measure to which the legislation refers.
74. Similarly, section 28 is useful when drafting legislation implementing EU obligations, as it makes it possible to make cross references to an EU instrument that include any *subsequent* amendments made to relevant piece of EU legislation. This means, for example, that where the values in an EU measure in a complex and technical area are regularly updated it is not necessary to make new domestic legislation every time those values change.
75. Our searches suggest there are 323 instances of where section 28 has been cited in the pre-amble to statutory instruments. There may of course be incidences of the use of the power which was not indicated in the pre-amble to the instrument, or other scenarios, which were not captured by our search. However, this figure gives some indication of how useful the power has been.

²¹ <https://www.gov.uk/government/consultations/amending-the-regulators-compliance-code>

Conclusion

76. The LRRRA 2006 has delivered significant reforms reducing administrative and financial burdens. However, it has not achieved the increase in LROs expected when it was introduced. This may in part be due to the number of general deregulatory Bills since 2006 that have been introduced which included measures that might otherwise have delivered through LROs
77. While there have been fewer opportunities for LROs than expected, the process itself seems fit for purpose and the Act has and continues to provide a useful tool for measures that are unable to be taken forward in a bill.
78. Part 2 of the Act has been effective in providing a framework which supports good regulatory delivery, in accordance with the statutory principles established by the LRRRA 2006. The Regulators' Compliance Code established a regulatory framework to guide regulators' policy and behaviours to ensure that they follow the principles of good regulation.
79. The new Regulators code has a greater emphasis on promoting a constructive two-way dialogue between regulators and those that they regulate, and on promoting transparency and accountability. Support is being provided to the regulators to assist them in responding to the expectations set out in the Code.
80. Part 3 of the Act with its provisions for addressing a number of issues connected with legislation concerning the European Union makes the drafting of provisions referring to EU instruments easier, while the figure given for the use of Section 28 provides an indication of how useful the power has been.

Annex A - List of Secondary Legislation

Section	In Force	Amended by	Delegated Legislation
1	08/01/2007	Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch 1 para.144	<p>Legislative Reform (Clinical Commissioning Groups) Order 2014/2436</p> <p>Legislative Reform (Patents) Order 2014/1997</p> <p>Legislative Reform (Payments by Parish Councils, Community Councils and Parish Trustees) Order 2014/580</p> <p>Legislative Reform (Annual Review of Local Authorities) Order 2012/1879</p> <p>Legislative Reform (Registration of Overseas Births and Deaths) Order 2014/542</p> <p>Legislative Reform (Civil Partnership) Order 2012/3100</p> <p>Legislative Reform (Constitution of Veterinary Surgeons Preliminary Investigation and Disciplinary Committees) Order 2013/103</p> <p>Legislative Reform (Consumer Credit) Order 2008/2826</p> <p>Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2012/839</p> <p>Legislative Reform (Epping Forest) Order 2011/1761</p> <p>Legislative Reform (Hallmarking) Order 2013/251</p> <p>Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011/2687</p> <p>Legislative Reform (Insolvency) (Advertising Requirements) Order 2009/864</p> <p>Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18</p> <p>Legislative Reform (Licensing) (Interim Authority Notices etc.) Order 2010/2452</p>

Section	In Force	Amended by	Delegated Legislation
1	08/01/2007	Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch 1 para.144	<p>Legislative Reform (Limited Partnerships) Order 2009/1940</p> <p>Legislative Reform (Lloyd's) Order 2008/3001</p> <p>Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008/2840</p> <p>Legislative Reform (Local Government) (Animal Health Functions) Order 2009/1375</p> <p>Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009/1772</p> <p>Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2010/64</p> <p>Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009/1724</p> <p>Legislative Reform (Verification of Weighing and Measuring Equipment) Order 2008/3262</p>
2	08/01/2007		<p>Legislative Reform (Constitution of Veterinary Surgeons Preliminary Investigation and Disciplinary Committees) Order 2013/103</p> <p>Legislative Reform (Registration of Overseas Births and Deaths) Order 2014/542</p> <p>Legislative Reform (Health and Safety Executive) Order 2008/960</p> <p>Legislative Reform (Licensing) (Interim Authority Notices etc) Order 2010/2452</p>
3	08/01/2007		
4	08/01/2007	Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch 1 para 145	
5			
6	08/01/2007		
7	08/01/2007		
8	08/01/2007		

Section	In Force	Amended by	Delegated Legislation
9	08/01/2007		
10	08/01/2007		
11	08/01/2007	Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch 1 para 146	
12	08/01/2007		
13	08/01/2007	Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch 1 para 147	
14	08/01/2007	Fire and Rescue Services Act 2004 s.5E(3)(b) Localism Act 2011 s.7(3)(b)	
15	08/01/2007	Fire and Rescue Services Act 2004 s.5E(3)(c)	
16	08/01/2007	Fire and Rescue Services Act 2004 s.5E(3)(c)	
17	08/01/2007	Fire and Rescue Services Act 2004 s.5E(3)(c)	
18	08/01/2007	Fire and Rescue Services Act 2004 s.5E(3)(c) Localism Act 2011 s.7(3)(a)	
19	08/01/2007	Fire and Rescue Services Act 2004 s.5E(3)(c)	
20	08/01/2007		
21	08/01/2007		
22	08/01/2007		

Section	In Force	Amended by	Delegated Legislation
23	08/01/2007		Regulators' Compliance Code Legislative and Regulatory Reform code of Practice (Appointed Day) Order 2014/929 Legislative and Regulatory Reform Code of Practice (Appointed Day) Order 2007/3548
24	08/01/2007	Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch 1 para 148	Legislative and Regulatory Reform (Regulatory Functions) Order 2007/3544 Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2010/3028 Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2007/3544
25	08/01/2007	Treaty of Lisbon (Changes in Terminology) Order 2011/1043 art.6(1)(d)	
26	08/01/2007		
27	08/01/2007	Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1288 Sch 1 para 149	
28	08/01/2007	Treaty of Lisbon (Changes in Terminology) Order 2011/1043 art.6(1)(d)	This section inserted Para 1A of Schedule 2 into the European Communities Act 1972 which has 1A has subsequently been amended by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 and the European Union (Amendment) Act 2008. There have been dozens of SI's made under Para 1A Schedule 2.
29	08/01/2007		
30	08/01/2007		
31	08/01/2007		
32	08/01/2007		
33	08/11/2006		
34	08/01/2007		
35	08/01/2007		
Schedule	08/01/2007		

Annex B – List and Description of LROs

The savings have been calculated under different methodologies, and over different time periods and are not directly comparable

LRO	Act	Purpose	Proposed/ Used Procedure	NPV	EANCB (where present)
Entertainment Licensing (not yet made) DCMS	Licensing Act 2003	To extend the range of exemptions for low-risk regulated entertainment from the requirement to apply for a licence	Affirmative	£16.8m	£1.4m
Patents 2014 IPO (BIS)	Patents Act 1977	To clarify that activities which are carried out for the purposes of obtaining regulatory approval or Health Technology Assessment for drugs fall within the scope of the 1977 Act and do not therefore infringe the rights of any patent-holder.	Affirmative	£0	£0
Clinical Commissioning Groups 2014 DoH	National Health Service Act 2006 to correct changes made by the Health and Social Care Act 2012.	To allow a CCG to exercise its functions through joint commissioning groups or to form a joint committee with NHS England.	Affirmative	£17m	-
Regulation of Providers of Social Work Services England and Wales <i>Withdrawn</i> DfE	Children and Young Persons Act 2008	To bring Part 1 of the Children and Young Persons Act 2008 fully into force before a sunset provision in the Act takes effect in November 2013. Part 1 of the 2008 Act allows local authorities to delegate certain social service functions to providers of social work services.	Negative /Super-affirmative	-	-
Overseas Registration of Births and Deaths Order 2014 FCO		To allow regulations to provide for births and deaths of UK citizens outside the UK to be registered by the authorities in the UK	Affirmative	£0.75m	-

LRO	Act	Purpose	Proposed/ Used Procedure	NPV	EANCB (where present)
Payments by Parish Councils, Community Councils and Charter Trustees Order 2013. DCLG	Local Government Act 1972 Charter Trustees Regulations 1996	To remove the "two-signature rule" which requires parish councils and charter trustees to ensure that all their cheques and other orders for the payment of money must be signed by two members of the council or two trustees.	Negative	Not quantified	-
Hallmarking 2013 BIS	Hallmarking Act 1973	To remove the geographical limitation on the hallmarking activities of the UK Assay Offices	Affirmative	£0m	£3.4m
Constitution of Veterinary Surgeons Preliminary Investigation and Disciplinary Committees 2013 Defra	Veterinary Surgeons Act 1966	to amend provisions to the constitution of the committees of the Royal College of Veterinary Surgeons (RCVS) that deal with disciplinary proceedings	Affirmative	£0.04m	-£0.45m
Annual Review of Local Authorities 2012. DfE	Education and Inspections Act 2006	To repeal the requirement on Ofsted to conduct an annual assessment of local authority children's services (Ofsted will continue to inspect and make judgements on the quality of local authority child protection, safeguarding, early intervention and looked after children's services)	Negative /Affirmative	-	-
Industrial and Provident Societies and Credit Unions 2011 HMT	Industrial and Provident Societies Acts 1965 and 1968 Credit Unions Act 1979	To update the legislative framework for credit unions and Industrial and Provident Societies in Great Britain to enable those societies better to serve their members and to promote financial inclusion	Super Affirmative	£5.2m	£45m

LRO	Act	Purpose	Proposed/ Used Procedure	NPV	EANCB (where present)
Epping Forest 2011 HO	Epping Forest Act 1878	To allow the Metropolitan Police Service to erect a Muster, Briefing and Deployment Centre in the area of Epping Forest known as Wanstead Flats for a specific period of just under three months encompassing the Olympic and Paralympic Games in 2012.	Affirmative	-	-
Civil Partnership 2011 FCO	Civil Partnership Act 2004	Change to allow locally recruited staff in UK consular services to conduct and register civil partnership ceremonies.	Affirmative	-	-
Insolvency Miscellaneous Provisions 2009 BIS	Insolvency Act 1986	Changes including: relaxing the requirements for attendance at meetings; extending the use of websites to provide documents; permitting the use of e-mail for sending documents; reducing the number of documents which must be sworn by affidavit; removing the requirement for a liquidator to hold an annual meeting of creditors and/or members	Super affirmative	-	£208.5m
Dangerous Wild Animals Licensing 2010 Defra	Dangerous Wild Animals Act 1976	Changes to licensing to: remove requirement on local authorities to carry out inspections in respect of certain applications; extend the period of validity of a licence; and provide that licences come into force immediately upon their being granted	Affirmative /Super - affirmative	-	£0.2m
Licensing Interim Authority Notices etc. 2010 DCMS	Licensing Act 2003	Extends some of the time periods set out in the Licensing Act 2003, with the intention of making it easier for premises to keep on trading following the unexpected death or incapacity of the licence holder; and to allow the police more time before deciding whether to object to certain proposals under the Licensing Act.	Negative /Affirmative	-	£137m

LRO	Act	Purpose	Proposed/ Used Procedure	NPV	EANCB (where present)
Insolvency Advertising Requirements 2009 BIS	Insolvency Act 1986	To remove the requirement to advertise in 2 local newspapers, and replace it with discretion for the liquidator (or company) to undertake any additional advertising that they see fit.	Affirmative	-	£30.74m
Supervision of Alcohol Sales in Church and Village Halls 2009 DCMS	Licensing Act 2003	To simplify the process for applying for certain 'minor' variations to existing licences.	Negative /Super - affirmative	-	£1.7m
Local Government Animal Health Functions Order 2009 Defra	Local Government Act 1972	To allow local authorities in England to arrange for animal health functions to be carried out by other local authorities.	Negative	-	£0.3m
Minor Variations to Premises Licenses and Club Premises Certificates 2009 DCMS	Licensing Act 2003	To introduce an expedited process for dealing with proposed minor changes to premises licensed under the Licensing Act 2003.	Super affirmative	-	17.5m
Limited Partnerships 2009 BIS	Limited Partnerships Act 1907	To end the current uncertainty about the formation of limited partnerships.	Affirmative	-	-

LRO	Act	Purpose	Proposed/ Used Procedure	NPV	EANCB (where present)
Revocation of Prescribed Form of Penalty Notice for Disorderly Behavior 2009 MoJ	Criminal Justice and Police Act 2001	To remove the requirement to prescribe by regulations on the format of the form used to allow individual police forces to use electronic devices	Affirmative	-	-
Health and Safety Executive 2008 HSE	Health and Safety at Work 1974	To merge the Health and Safety Commission and the Health and Safety Executive.	Affirmative	-	-
Consumer Credit 2008 BIS	Consumer Credit Act 1974	To exempt buy-to-let lending from regulation; clarify the position on statements for fixed-sum credit agreements; and provide definitions of "payments" for the purpose of issuing notices of sums in arrears	Affirmative	-	£103.2m
Verification of Weighing and Measuring Equipment 2008 NML (BIS)	Weights and Measures Act 1985	To allow approved verifiers to verify equipment that they have adjusted	Affirmative	No NPV IA states £615,000 savings to business per year	-
Local Authority Consent Requirements England and Wales 2008 DCLG	Cancer Act 1939; Local Government Act 1972; Local Government (Overseas Assistance) Act 1993; Education Act 1996	To remove requirements for Local Authorities in England and Wales to seek consent before taking certain actions	Affirmative /Super - affirmative	-	-
Lloyd's 2008	Lloyd's Act 1982	To modernise the governance arrangements at Lloyd's and remove unnecessary restrictions on how Lloyd's organises its affairs	Affirmative	-	£0.2m

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