

ECONOMIC DEVELOPMENT COMMITTEE EDC 02-01 (p5)

DATE: 31 January 2001

VENUE: Committee Room 1

TITLE: BACKGROUND TO THE PROPOSED REGULATORY REFORM BILL AND ITS IMPLICATIONS FOR WALES

Purpose of the Paper

1. To provide the Committee with the background to the proposed Regulatory Reform Bill and outline the implications of this UK Bill for Wales.

Background

2. The Bill was announced in the Queen's speech for the 2000/2001 session and introduced in the House of Lords on 7 December. It received its Second Reading on 21 December and is currently in Committee.

Action

3. The Committee is asked to comment on the implications of this Bill for Wales and report to the Assembly by 13 February, in line with the Assembly's resolution of 19 December.

Purpose of the Bill

4. The Regulatory Reform Bill is intended to replace key sections of part one of the Deregulation and Contracting Out Act 1994. Essentially it will make it easier to remove redundant legislation or legislation which imposes unnecessary burdens on businesses and others.

5. The new order-making power is intended to be wide enough, but no wider than necessary, to deal with regulatory reform measures which the UK Government wishes to achieve. In parallel with the widening of the power, the Bill adds to the tests and safeguards governing its use.

6. The Bill also makes provision to replace section 5 of the 1994 Act, which is concerned with enforcement of regulations, replacing a little used procedure with a reserve power for UK Ministers and the Assembly to set out a code of good practice in enforcement.

7. This is seen as a key part of the Government's Better Regulation agenda and of its efforts to reduce red tape. One of the key principles for Enterprise and Economic Development in *Putting Wales First*, is that the National Assembly seeks "*to minimise the burdens on business*".

Regulatory Reform Orders: Scope of Proposed New Powers

8. The current order-making power is limited in its scope (see Annex 1). It has mostly been used for small items. The Regulatory Reform Bill seeks to extend the power so that it can be used more widely. There are a number of differences between the proposed new order-making power and the power under the 1994 Act. Orders under the new power, which are expected to be called Regulatory Reform Orders, will be capable of:

- Reforming legislation;
- Imposing additional burdens where necessary, provided they are proportionate and they strike a fair balance between public interest and the interests of those affected by a new burden;
- Removing inconsistencies and anomalies in legislation;
- Dealing with burdensome situations caused by a lack of statutory provision to do something;
- Applying to legislation passed after the Bill if it is at least two years old when the order is made and has not been amended in substance during the last two years;
- Relieving burdens from anyone, including Ministers and government departments, and devolved administrations, but not where only they would benefit; and
- Allowing administrative and minor detail to be further amended by subordinate provisions orders.

Regulatory Reform Orders: Implications for the Assembly

9. The Bill gives the Assembly a formal role in regulatory policy. This is in contrast to the current position: the Assembly has no functions at all under the 1994 Act.

10. Though the Assembly will not have executive powers **under Clause 1 of the Bill (see Annex**

4) as drafted, the consultation process will inevitably provide a powerful mechanism for change, and can be used for the benefit of businesses and the people of Wales.

11. While the Assembly cannot in itself make a Regulatory Reform Order (RRO), UK Ministers must seek the Assembly's agreement to any RRO that affects the Assembly's functions, and must consult the Assembly on any RRO affecting Wales. This allows the Assembly to influence regulatory issues that will effect Wales, and the thoughts and concerns of businesses and the Welsh people can be considered and taken on board prior to approving any reforms.

12. The power offered to the Assembly **under Clause 4 of the Bill (see Annex 4)** to make a Subordinate Provision Order (SPO), allows the Assembly to influence the content of primary regulatory reform orders, and in this way the National Assembly has direct influence on how the people of Wales should be regulated.

13. The Assembly's power to make an SPO offers an opportunity to tailor regulatory reform orders at their initiation stage. This again goes back to the consultation process which is a pre-requisite of any regulatory reform order, and, for the first time, offers real input into the de-regulation process by the National Assembly.

14. This gives the National Assembly the opportunity to work creatively with UK government, and if managed correctly and efficiently can create a climate of real and sustainable National Assembly input.

Code of Good Practice for Enforcement

15. The new Bill will replace the current section 5 of the 1994 Act with a new discretionary power enabling Ministers to establish a new code of good enforcement practice. This will provide a safeguard if problems are encountered with the voluntary approach.

16. This offers the Assembly the opportunity of working with enforcers to effectively implement the enforcement concordat, which is only partially being taken on board (see Annex 3).

17. The enforcement concordat offers the opportunity for local authorities to work with business in creating an atmosphere of co-operation rather than confrontation. This will be welcomed by business, enforcers and government alike and the Assembly will play a pivotal role in accomplishing the desired atmosphere of co-operation.

Enforcement Codes: Implications for the Assembly

18. Where Assembly enforcement functions are involved, such as the control of animal health and welfare in Wales, the new power will be exercisable by the Assembly, or by a UK Minister acting with the agreement of the Assembly.

19. The UK Government would have the power to apply the code in Wales for non-transferred functions, but only after consultation with the Assembly.

Possible Uses of the Bill in Wales

20. Heads of Divisions are being consulted about possible uses of these powers. Suggestions received to date include:

Housing

Housing and Community Renewal Division are working with DETR on the Grants and Loans for Private Sector Housing Order. This proposal would remove most of the restrictions on local authorities' powers to give assistance for home repair and would allow them the alternative of offering loans. It would give local housing authorities the freedom to act strategically to tackle the problems in their area, and to make effective use of resources to provide help to those who need it most.

Although the Order will affect both England and Wales it will be taken forward by DETR. The Finance Minister has agreed to the policy changes which Order will introduce and to the procedural arrangements put in place with DETR. Officials are in touch with DETR on the formal consultation arrangements with the Assembly.

Environment

Environment Division would like to put forward for consideration the repeal of the requirement on local authorities to seek the Assembly's approval to byelaws banning dogs from beaches at certain times of the year. (There is a parallel responsibility in England requiring Ministerial approval). The use of the Bill for this kind of change will need to be confirmed with the Cabinet Office.

Annex 1

The Existing Deregulation Order Making Power

Sections 1-4 of the 1994 Act provide a mechanism to change primary legislation for the purpose of removing or reducing burdens on business and others. The order-making power in section 1 allows a UK Minister to amend or repeal pre-1994 legislation which imposes a burden affecting any person in the carrying on of any trade, business or profession or otherwise, provided doing so would not remove any necessary protection. The Minister may impose a new, less onerous regulatory regime if she, or he, wishes. The order-making power is constrained by the subsequent three sections:

- Section 2 limits the maximum penalties that can be imposed if a deregulation order creates a new criminal offence, and prevents orders from creating new powers to enter, search or seize property by force or compel people to give evidence.
- Section 3 ensures that interested parties have an opportunity to comment on any proposed order, that their comments are considered by the Minister and that Parliament is aware of their views when the proposed order is laid for Parliamentary consideration.
- Section 4 sets out the procedure for Parliamentary consideration of the proposed order. It provides for a period of 60 days for consultation before the draft order can be laid.

The deregulation order-making power under the 1994 Act has been used 46 times to date, to remove burdens from business and individuals which might not otherwise have received Parliamentary time. Orders have included for example, relaxing the restrictions on opening hours of licensed premises over Millennium Eve.

Annex 2

The Existing Enforcement Provisions

Section 5 of the 1994 Act was designed to provide protection for businesses against what was described in debate as "over-zealous or unreasonable application of regulations" (House of Lords Hansard 11 October 1994, col.832).

Officials in central and local government enforce a number of regulatory requirements, for example, the requirements on public houses to limit their opening hours; to provide facilities such as lavatories for customers and staff; to have arrangements in place to ensure safe storage and preparation of food; and not to sell alcohol to children.

Section 5 allows Ministers by order to apply the enforcement procedures set out in Schedule 2 of the 1994 Act to named pieces of legislation. This gives Ministers the power to:

- Require that when an enforcement officer informally tells a business that it should take some remedial action, before the question of formal action arises, the business is entitled on request to a written statement making clear what action is necessary and why;
- Require enforcers, where they take immediate enforcement action, which would impose a significant cost, to provide a statement as soon as practicable explaining the reasons for immediate action;
- Require enforcers to issue business with a notice that they are "minded to" take enforcement action. The business would then be entitled to have its point of view heard and taken into account within a specified period before any formal action was taken;
- Require that, when formal action is taken, the business should be told exactly what rights it has to appeal; and
- Apply relevant provisions to third parties who have a direct economic interest in an enforcement decision.

Section 5 has been applied directly only once, in the Deregulation (Improvement of enforcement Procedures) (Food Safety Act 1990) Order 1996 (SI: 1996/1683).

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

Annex 3

The Enforcement Concordat

Following the 1997 election, the Government reviewed the results of the consultation exercise. It decided not to pursue the section 5 procedures but to adopt a new approach based on co-operation between enforcers and those subject to enforcement. Representatives of business, the voluntary sector, the enforcement community and consumer groups were closely involved in the development of the Enforcement Concordat.

The Concordat is a voluntary code that describes for businesses and others what they can expect from enforcement officers. Along with the Cabinet Office, we have been encouraging local authorities in Wales to adopt it across the full range of their regulatory activities. To date 14 authorities in Wales have formally adopted the Concordat, and a further 6 have partially adopted it.

Annex 4

Clause 1

Clause 1 subsection 4 states that:

"any Order made under this section which removes or modifies any function of the National Assembly for Wales may be made only with the agreement of the Assembly."

This reflects the devolution settlement. It provides that the consent of the National Assembly would be required for any order that sought to modify any function of the Assembly. The Order making powers itself is not available to the Assembly.

Clause 4

Clause 4 subsection 5 states:

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

- a. by the National Assembly for Wales,
- b. by the Assembly concurrently with a Minister of the Crown, or
- c. by a Minister of the Crown with the agreement of, or after consultation with, the Assembly;

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

This specifies the role of the Assembly in making subordinate provisions orders relating to Wales. The purpose is to reflect the devolution settlement.