AUSTRALIA-NEW ZEALAND SCRUTINY OF LEGISLATION CONFERENCE

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LEGISLATIVE SCRUTINY: ARE THE ANZACS STILL THE LEADERS?

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Introduction

Parliaments in Australia and New Zealand have long recognised the obligation that falls on them to provide oversight of delegated legislation. There has been a steady development of the procedures adopted to carry out this function.

Initially this went no further than requiring the tabling of specified types of delegated legislation for the information of the Parliament. This was followed by the bold step of enabling the Parliament to disallow particular pieces of legislation. Later came automatic disallowance if a motion is not called on for debate; the establishment of committees to advise a House of the Parliament whether disallowance is appropriate; proscription of remaking disallowed legislation; and deeming certain retrospective legislation invalid. Gradually the range of instruments that can be disallowed has been expanded.

More recently, greater attention has been paid to the presentation of delegated legislation and its availability to the public who are affected by it. Accompanying statements explaining the operation of the legislation have come to be expected. Sunsetting or staged repeal has been adopted to rejuvenate the statute book. Most significantly, in a number of jurisdictions some or all delegated legislation is now placed on an electronic register thereby overcoming the endemic problem of its accessibility to persons affected.

In all these developments, Australia and New Zealand Parliaments have been at the forefront and still remain there. However, it is easy to become complacent. There are some topics on which it is suggested that the ANZAC Parliaments have not stayed abreast of their confreres in other countries and in relation to which it is desirable for them to examine their practices.

(1) Explanatory statements

The obligation of sponsors of delegated legislation to provide an accompanying explanatory statement is widespread. Such a statement is seen as an aid to the Parliament's and the public's understanding of the legislation. It is a document that is taken into account by courts in interpreting legislation.

Explanatory statements are usually prepared by the government agency that determines the policy to which the legislation gives effect. This may be a different authority from that which drafts the legislation.

The quality of explanatory statements varies considerably. Some do provide a useful guide to the reason why legislation is being made. Most do not. Too often they contain merely a paraphrase of the legislation itself. With amending legislation this is almost useless as what is needed is a statement of why the principal legislation has been amended.

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To enable Parliament to understand the effect of the delegated legislation, explanatory statements should also indicate what its likely impact on the public will be and what consultation has occurred with the sectors of the public that will be affected. Again this information is seldom included.

All too often an explanatory statement relating to Australian legislation comprises a long paraphrase of the legislation to which it relates with little or no additional information that will assist its understanding or explain why it has been made.

The Senate Regulations and Ordinances Committee has stated[1] that an explanatory memorandum should:

- provide a plain English explanation;
- state the authority for making the instrument;
- state the reasons for making the instrument;
- summarise the likely impact and effect;
- discuss any unusual aspects or matters that call for special comment;
- give reasons for and the basis upon which charges or fees have been increased or decreased;
- advise, where required, that consultation has taken place and the effect of that consultation;
- provide a detailed provision-by-provision description of the instrument; and
- be precise and informative.

However, the Committee indicates that these requirements are not always followed. A quick survey of the statements that are included on the Legislative Instruments Register bears this out all too clearly. 'Seldom followed' might be a better description.

The Committee apparently wrote to Ministers on 20 March 2008 stating that 'inadequate or incomplete explanatory material occupies a disproportionate amount of its time'[2]. The 2008 Review of the Legislative Instruments Act 2003 also made suggestions for the improvement of explanatory statements.[3] It appears that it will be necessary for the Committee to keep pressing the issue.

However, I wonder if a significant part of the problem lies in the fact that the Committee (and I think that this is common to other jurisdictions) is asking for too much detail. The insistence on a provision by provision description of the legislation is what results in the long recapitulation of its content. The Committee does not need this. It wants to have its attention directed to the essential features of the legislation. Its content can be read.

In this context it is educative to compare the practice followed in the United Kingdom. A sample explanatory memorandum chosen at random is attached. It appears to represent a standard example of the UK format for such documents.

A most cursory examination reveals that it is a much more useful document than those commonly produced in Australia. It describes the effect of the instrument succinctly, provides a guide to why it was made and its likely impact, states what

consultation has occurred and indicates how the instrument's impact into the future is to be monitored. The assistance that a memorandum in this form will provide the Parliament and the public is manifest.

An interesting feature of the memorandum is that it provides a government contact officer. The public can thus seek further information in relation to the instrument. Significantly, it is this person to whom the Parliamentary scrutiny committees initially direct their concerns. The Minister is only questioned by the committee if there is still dissatisfaction after contact with the government officer.

The preparation of an explanatory statement is regarded as an onerous task by those charged with the preparation of delegated legislation. It is usually done as a last minute exercise before the legislation is made. This is a large part of the reason why it is not an informative document. I should like to suggest that if the focus of the requirement is directed away from the tedious and repetitive task of preparing a provision by provision description of the legislation (which may be extremely long), the executive officers charged with the preparation of the statement will have their attention concentrated on the useful material to be included in the statement.

I suggest that the ANZAC Parliament's committees would do themselves and the public a service if they directed government attention to this UK precedent and pressed for it to be followed.

A further issue that is worth pursuing is the availability of explanatory statements. These seem seldom to be included on State registers of delegated legislation. If they are to serve a useful purpose, they need to be accessible to members of the public as well as to Parliaments.

(2) Pre-making consultation

The Administrative Review Council's influential report on Rule Making by Commonwealth Agencies laid great emphasis on consultation taking place before delegated legislation is made. The Council was influenced by its perception of the practice followed in Victoria. The provisions that were ultimately included in the Legislative Instruments Act 2003 contain no mandatory requirement to consult.

There is an obligation to include in the explanatory statement to an instrument information relating to the consultation that has occurred or if there has been none why that was so. However, the Senate Regulations and Ordinances Committee in its 113th Report commented most critically on the adequacy of the information relating to consultation contained in the explanatory statements. I understand that it is an issue of ongoing concern for the Committee.

There is no general obligation in the UK to engage in pre-making consultation although, as in Australia, it is often undertaken - but at the option of the agency. However, in terms of the presentation of information relating to whatever consultation has occurred, it is again worthwhile comparing the information included in the UK explanatory memorandum. The memorandum reproduced was chosen at random but a brief survey of other memoranda reveals that they are generally more informative than their Australian counterparts.

The Commonwealth public service was let off the hook of mandatory consultation by the compromises reached to secure the passage of the Legislative Instruments Act. The requirements included in the Act are exhortatory only.[4] The 2008 Review

of the Legislative Instruments Act 2003 included recommendations directed to improving the consultative process. However, they amount only to a reminder of the limited exhortation to consult and provision of guidance as to how this might be done.[5] It is doubtful whether either of these matters will result in any change in practice by the Commonwealth agencies concerned with the production of delegated legislation.

Consultation is mandated in regard to the more significant pieces of delegated legislation in Victoria.[6] It appears to work. This is an issue that it behoves the ANZAC Parliamentary Committees to keep on their agenda. The public is affected by delegated legislation as much as it is by Acts of the Parliament. The voice of affected parties should be a part of the legislative process.

At the very least the sponsors of delegated legislation should be required to indicate to the Parliament if they have engaged in appropriate consultation.

(3) Parliament and policy

More and more we are seeing major policy matters being dealt with in delegated legislation. There are probably many reasons for this. For example, I am told that matters are often left to be included in regulations because there has not been time to cover all issues in the Bill introduced into the Parliament. Time is thus gained to deal with matters that may be of significance.

Another reason for using delegated legislation for substantive issues flows from the approach that has many advocates of drafting Bills in skeletal form setting out only the major principles. By definition, this means that significant material must be included in the delegated legislation.

Matters dealt with in delegated legislation in these cases are as significant for the public as the matters included in Bills. Where are these issues of policy reviewed?

The application of their criteria by the various Review Committees results in some policy issues being considered. However, these are limited to what might be termed interference with general human rights. More general policy issues, including those that might be termed red tape – requirements for business licences, requirements for approvals to conduct an activity – are not questioned. Regard will be paid to the way in which a licence scheme is to be administered, eg whether there are appeal rights, the means of seeking of information, etc, but not why a licence scheme was considered necessary.

As far as parliamentarians generally are concerned, it is only overtly political delegated legislation such as, in recent times in the Commonwealth Parliament, control over immigration, that attracts attention.

The absence of formal machinery for consultation before making means that, if the Parliament is really going to exercise an oversight role in relation to the use by the executive of delegated power to make legislation, it needs to take steps to apprise itself of that legislation and have means available to those affected to raise their concerns.

This will require confrontation with the significant issue of principle – are Members of Parliament politicians or parliamentarians?[7] It is this question that the Review Committees have conjured with successfully throughout their existence.

They have managed to keep the politics at bay by limiting their role to issues where the committee members feel that they are not driven to support their party. However, by so doing a large hole has been left in the oversight of delegated legislation. More significantly, it has created a culture which denies that the Parliament should be involved in the oversight of the policy underlying delegated legislation.

This means that the executive is able to include provisions in delegated legislation that it would, at the very least, have to justify if they were included in an Act and, in the face of a hostile Upper House, might not be able to enact. It is thus much easier for the executive to establish regimes of control through delegated legislation than it is through primary legislation.

What can be done about this?

The Senate Scrutiny of Bills Committee sees as one of its tasks the need to bring to the attention of the Senate the breadth of delegated legislation making powers that are included in Acts. For example, it protested about a provision that stated:

> The regulations may provide for prescribed decisions of the Secretary to be reviewed by prescribed review officers on applications, as prescribed, by prescribed persons.[8]

However, it is doubtful whether the interest of this Committee (or its State and Territory equivalents) alone will be sufficient to contain excessive regulation. If a government is pushing a Bill through the Parliament, complaints about the breadth of the regulation-making power will attract little response. If the Bill is meant to cover principles only, the regulation-making power must perforce leave the detailed policy to delegated legislation.

ANZAC Parliamentary Review Committees have taken a stance that rejects entry into the policy arena beyond that which flows directly from their terms of reference. The perceived fear of introducing political outcomes and thereby destroying the bipartisanship that has been a feature of their existence has prompted them to reject any widening of their terms of reference. However, again there may be lessons to be learned from the House of Lords.

The UK Parliament has two committees concerned with delegated legislation: the Joint Committee on Statutory Instruments, which performs functions akin to the ANZAC Review Committees, and the House of Lords Merits of Statutory Instruments Committee. It is this latter body that bears examination in the present context.

The Committee was established in 2003. Its Terms of Reference read:

> (1) The Committee shall, subject to the exceptions in paragraph (2), consider-
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> (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament, with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).

(2) The exceptions are-

(a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;

(b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;

(c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

(3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are-

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives.

(4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

The Committee's Report for 2007-08 provides a summary of its work and indicates how such a committee charged with examining the merits of delegated legislation functions:

11. We met 33 times in session 2007-08 and published 34 reports on a total of 1154 instruments (189 affirmative and 965 negative). This is slightly fewer than the total of 1179 instruments considered in 2006-07 but we note that at 16% the proportion of affirmatives was rather higher than in previous sessions (13% in 2006-07 and 11% in 2005-06).

12. We drew 20 affirmative instruments and 34 negative instruments to the special attention of the House: a reporting rate of 10.6% for affirmative instruments and 3.5% for negative instruments. Of the negative instruments which we reported, 11 were debated or otherwise engaged with by the House: an engagement rate of 33%. (The figures for 2007-08 were: 23 affirmative instruments and 39 negative instruments: a reporting rate of 15% for affirmative instruments and 4% for negative instruments. Of the negative instruments which we reported, 15 were debated or otherwise engaged with by

the House: an engagement rate of 38 %.) We have held no oral evidence sessions on individual instruments this year, but have welcomed the increase in the number of written submissions that we have received from the public which have helped to broaden our perspective on a number of instruments.

13. Using our terms of reference … we have drawn 54 instruments (that is 4.7% of the total number of instruments considered) to the special attention of the House this session as follows:

- 49 instruments (90.7%) on the ground of political importance or public policy interest;
- 1 (1.9%) on the grounds both of public policy interest and of imperfectly achieving its policy objective;
- 1 (1.9%) on the ground of imperfectly achieving its policy objective; and
- 3 (5.7%) on the ground of inappropriately implementing European Union legislation.

14. This is broadly consistent with last session in which we drew just over 5% to the special attention of the House. As in the last session, the majority of Statutory Instruments reported have shown flaws, either in a lack of evidence to support the assertions made in the supporting documentation or through insufficient explanation of how the policy will work in practice.

15. In deciding which instruments to draw to the special attention of the House, we have continued to limit our reports only to those on which we believe the House may wish to take action. In contrast, our use of short paragraphs under the heading *"other instruments of interest"* has grown. We use this device to alert members to instruments that appear to pursue their stated policy objective accurately, but may be of topical interest. Members have told us that they find this a useful service.

It can be seen that it is a very busy committee. It has a staff of 4 (one of whom provides assistance to other committees). While it functions like the Bills Scrutiny Committees to be found in most ANZAC Parliaments in that it brings matters to the attention of the Parliament without any formal motions being moved, its reports do prompt action by the Parliament.

It can be seen that the Committee's activities are fairly circumscribed. Some of the bases on which it operates could fall within the aegis of the ANZAC Committees that are empowered to bring to the attention of the Parliament matters that are more appropriate for parliamentary enactment. However, this is not a ground that is often invoked nor is it likely to be used to deal with the broader policy issues to which I am referring.

The Lords Committee is not one that has a wide ranging remit and it is doubtful if its actions could be said to be taking over the role of the government. What its existence demonstrates is that a parliamentary committee can deal with issues of policy in delegated legislation capably and without descent into party political disputation. More importantly, it requires the government to confront the fact that

it may have to justify the merits of the policy that it is including in non-Bill legislation. This is not the position in the ANZAC Parliaments.

I suggest that it is incumbent on the ANZAC Parliaments to consider the precedent of this Committee. The great settlements between the Crown and the Parliament that occurred in England in the seventeenth century were intended to prevent the executive from being able to determine the law that it pleased. The abandonment by the ANZAC Parliaments of a role in relation to the policy of delegated legislation has empowered the executive to do just that. It seems incongruous that political argument and possible division along party lines is accepted as appropriate for legislation in the form of Bills but not for legislation made by the executive. The Parliaments have largely opted out of any responsibility for the legislation that more and more has a significant impact on the public.

I should like to suggest that the ANZAC Parliaments should examine afresh their obligations in relation to the oversight of delegated legislation. Without some greater interest being taken in the substantive content of the ever increasing body of this form of legislation, the parliamentarians of today must be taken to have ceded a significant part of their legislating role to the executive.

APPENDIX

EXPLANATORY MEMORANDUM TO THE CONSERVATION (NATURAL HABITATS, &c.) (AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2009
2009 No. 6

THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &c.) (AMENDMENT) REGULATIONS 2009
2009 No. 7

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty

2. Purpose of the instrument
2.1 The Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/6) ("the England and Wales Amendment Regulations") amend the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) (the "Habitats Regulations"), which transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive").
2.2 The Offshore Marine Conservation (Natural Habitats, &c) (Amendment) Regulations 2009 (S.I. 2009/7) (the "Offshore Amendment Regulations") amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) ("the "Offshore Marine Regulations"), which transpose the Habitats Directive and Council Directive 79/409/EEC on the conservation of wild birds (the "Wild Birds Directive") in relation to marine areas for which the United Kingdom has jurisdiction beyond its territorial sea – broadly from 12 nautical miles to 200 nautical miles from the United Kingdom's coastal baseline. The amendments relate only to the transposition of the Habitats Directive, and the transposition of the Wild Birds Directive is unaltered.
2.3 …

3. Matters of special interest to the Joint Committee on Statutory Instruments
3.1 None.

4. Legislative Context
4.1 The Habitats Regulations are the principal means by which the Habitats Directive is transposed for Great Britain and its territorial seas. Similar Regulations, the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 (SR(NI) 1995/380), transpose the Habitats Directive in relation to Northern Ireland.
4.2 The Offshore Marine Regulations were made, and the Habitats Regulations were amended by S.I. 2007/1843, to comply with an ECJ judgment against the United Kingdom, C-6/04 *Commission v. United Kingdom*, concerning the failure of the United Kingdom to fulfil its obligations under Articles 6(2), 6(3), 6(4), 11, 12(1), 12(2), 12(4), 13(1), 14(2), 15 and 16 of the Habitats Directive, as well as the whole directive beyond the United Kingdom's territorial waters.
4.3 The England and Wales Amendment Regulations and the Offshore

Amendment Regulations amend provisions relating to the protection of species to better implement the requirements of Articles 12(1) and 16(1) of the Habitats Directive, and make more detailed provision for the surveillance and monitoring of natural habitats and species of Community interest pursuant to Articles 11 and 12(4).
4.4 The Scottish Ministers and the Department of the Environment for Northern Ireland are making regulations, similar to the England and Wales Amendment Regulations, for Scotland and Northern Ireland respectively.
4.5 Agreement to make the England and Wales Amendment Regulations and the Offshore Amendment Regulations was given by the Ministerial Committee on National Security, International Relations and Development (EU) on 13th November 2008.

5. Territorial Extent and Application
5.1 The England and Wales Amendment Regulations extend only to England and Wales, although the Habitats Regulations, which they amend, also extend to Scotland. Scottish Ministers are making similar amendments to the Habitats Regulations for Scotland. In terms of territorial application, the England and Wales Amendment Regulations and the Habitats Regulations apply to terrestrial areas, internal waters and the territorial sea (i.e. out to 12 nautical miles).
5.2 The Offshore Amendment Regulations apply to the United Kingdom's offshore marine area, which means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the continental shelf) and any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man).

6. European Convention on Human Rights
6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why
7.1 The objective of the Habitats Directive is to protect biodiversity through conservation of natural habitats and species of wild fauna and flora. The Directive lays down rules for the protection, management and exploitation of habitats and species. The Offshore Marine Regulations fulfil these objectives in the United Kingdom's offshore marine area (broadly, beyond 12 nautical miles from the coastal baseline and out to 200 nautical miles) by ensuring that activities beyond territorial waters are carried out in a manner that is consistent with the Directive. The Habitats Regulations fulfil these objectives in respect of terrestrial areas, internal waters and the territorial sea.
7.2 In the light of discussions with the European Commission following the making of the Offshore Marine Regulations and the amendment of the Habitats Regulations in 2007, it has been decided to amend those instruments further in order to ensure that the United Kingdom has fully complied with the ECJ's judgment in Case C-6/04 and to secure the closure of those infraction proceedings.
7.3 The amendments include, in particular, the insertion of more detailed provisions for the surveillance of natural habitats and species of Community interest, and the monitoring of incidental capture and killing of European protected species.

Those provisions are amended to include specific requirements for nature conservation bodies to assess the needs for such surveillance and monitoring and advise the Secretary of State and Welsh Ministers, and for the Secretary of State and Welsh Ministers to ensure that the necessary surveillance and monitoring is carried out. They also indicate who may carry out such surveillance and monitoring.
7.4 Additionally, provisions relating to the protection of species are amended in several respects. In particular-

- modifications are made to the wording of offences of disturbing protected species of animals;
- powers are inserted to publish guidance about the application of certain species protection offences in relation to particular species of animals or particular activities, and a requirement has been introduced for the courts to take account of any such guidance in proceedings for those offences;
- defences to species protection offences are made subject to the proviso that they shall not apply if it is shown that either of the two conditions set out in Article 16(1) of the Directive are not satisfied, i.e. that there is no satisfactory alternative and that the action is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range; and
- special provisions about the application of species protection offences in relation to sea fishing activities are revoked in the Habitats Regulations.

Consolidation

7.5 The purpose of the amendments made by the present instruments is to ensure that the Habitats Regulations and Offshore Marine Regulations fully comply with the judgment in Case C-6/04. Defra wished to implement these amendments as quickly as possible, and therefore the remit of the amendments was not extended to include an element of consolidation as this would have added to the complexity of the exercise and led to delays.
7.6 It is intended that once the above Regulations are made, a review and consolidation of the UK's transposition of the Habitats Directive will be planned.
7.7 In order that we may quantify the potential size of the task and resources required, we will review and analyse the scope for consolidation, including further harmonisation between the Habitats Regulations and Offshore Marine Regulations and interface with habitats related provisions in other legislation.
7.8 This scoping study is due to start in March 2009 and is planned to take three months. Defra will then consider the best way forward. The current timetable envisages Regulations being made in October 2010.

8. Consultation outcome

8.1 In preparing both sets of Amendment Regulations, Defra has consulted other Government departments, the devolved administrations in Wales, Scotland and Northern Ireland, and delivery bodies such as the Joint Nature Conservation Committee, Natural England, the Countryside Council for Wales and the Forestry Commission.
8.2 Stakeholders and the general public have not been consulted as the amendments do not introduce significant changes to the practical implementation of the Habitats Directive. A full public consultation was carried out before the Habitats Regulations were amended and the Offshore Marine Regulations were made in 2007.

9. Guidance

9.1 A simplified guide to the changes to the legislation will be sent to key stakeholders and practical guidance developed by key stakeholders and experts will be available on the internet to enable future updates if necessary. Changes will be publicised widely through the media using key stakeholder publications.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 Some further investment or re-targeting of resources by Government family organisations is likely to be necessary to ensure surveillance and monitoring obligations are adequately met. Costs will vary across the UK administrations and cannot be determined at this stage. However, the obligations in the Directive to carry out surveillance and monitoring already applied before the amendments made by these instruments.

10.3 Impact Assessments have not been prepared for these instruments.

11. Regulating small business

11.1 The legislation applies to small business. The impact on small firms is expected to be beneficial in light of additional clarity provided by the amendments and associated guidance.

12. Monitoring & review

12.1 The cost and benefits of these amendments will be reviewed as part of the proposed Habitats Directive transposition review and consolidation exercise, currently scheduled to take place between March 2009 and October 2010. The proposed review would consider whether the UK's transposition of the Directive is fit for purpose, identifying outstanding transposition issues not covered by earlier amendments and seeking to remove further infraction risk. A planned element of this exercise will be a post delivery review in October 2011.

13. Contact

13.1 Ashley Smith at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8335 or e-mail: **Ashley.Smith@defra.gsi.gov.uk** can answer queries regarding the Offshore Amendment Regulations.

13.2 Alison Elliott at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8817 or e-mail: **Alison Elliott @.defra.gsi.gov.uk** can answer queries regarding the England and Wales Amendment Regulations.

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[1] 112th Report 40th Parliament Report, 3.72.
[2] Letter reproduced in 2008 Review of the Legislative Instruments Act 2003, 6.4.
[3] Ibid
[4] Legislative Instruments Act 2003 Part 3.
[5] Report pp39-42.
[6] Subordinate Legislation Act 1994 (Vic) Part 2.
[7] Cf Malcolm Aldous reviewing 'The Challenge for Parliament: Making Government Accountable' (2003) 18 *Australasian Parliamentary Review* 152
[8] Migration Legislation Amendment Bill 1989 cl 61(1).