



# Legislative and Regulatory Reform Act 2006

## 2006 CHAPTER 51

### PART 1

#### ORDER-MAKING POWERS

##### *Restrictions*

### **3 Preconditions**

- (1) A Minister may not make provision under section 1(1) or 2(1), other than provision which merely restates an enactment, unless he considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.
- (2) Those conditions 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;
  - (f) the provision is not of constitutional significance.
- (3) A Minister may not make provision under section 1(1) or 2(1) which merely restates an enactment unless he considers that the condition in subsection (4) is satisfied in relation to that provision.
- (4) That condition is that the provision made would make the law more accessible or more easily understood.

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- (5) In this section and sections 4 to 7, to “restate” an enactment means to replace it with alterations only of form or arrangement (and for these purposes to remove an ambiguity is to make an alteration other than one of form or arrangement).

#### 4 Subordinate legislation

- (1) An order under this Part may only confer or transfer a function of legislating on or to—
- (a) a Minister of the Crown;
  - (b) any person on or to whom functions are conferred or have been transferred by an enactment; or
  - (c) a body which, or the holder of an office which, is created by the order.
- (2) An order under this Part may not make provision for the delegation of any function of legislating.
- (3) An order under this Part may not make provision to confer a function of legislating on a Minister of the Crown (alone or otherwise) unless the conditions in subsections (4) and (5) are satisfied.
- [<sup>F1</sup>(3A) An order under this Part may not make provision to confer a function of legislating on the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government (alone or otherwise) unless the conditions in subsections (4) and (5A) are satisfied.]
- <sup>F1</sup>(4) The condition in this subsection is that the function is exercisable by statutory instrument.
- (5) The condition in this subsection is that such a statutory instrument—
- (a) is an instrument to which section 5(1) of the Statutory Instruments Act 1946 (c. 36) applies (instruments subject to annulment by resolution of either House of Parliament); or
  - (b) is not to be made unless a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.
- [<sup>F2</sup>(5A) The condition in this subsection is that such a statutory instrument—
- (a) is an instrument to which section 5(1) of the Statutory Instruments Act 1946 applies (instruments subject to annulment); or
  - (b) is not to be made unless a draft of the statutory instrument has been laid before and approved by a resolution of the Assembly.]

<sup>F2</sup>(6) [<sup>F3</sup>Subsections (1) to (3A)]<sup>F3</sup> do not apply to provision which merely restates an enactment.

(7) For the purposes of this section a “function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.

#### Textual Amendments

- F1** S. 4(3A) inserted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2), 3, **Sch. 1 para. 145(a)**(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))

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- F2** S. 4(5A) inserted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2), 3, **Sch. 1 para. 145(b)**(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of [Government of Wales Act 2006 \(c. 32\)](#))
- F3** Words in s. 4(6) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2), 3, **Sch. 1 para. 145(c)**(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of [Government of Wales Act 2006 \(c. 32\)](#))

## 5 Taxation

- (1) An order under this Part may not make provision to impose, abolish or vary any tax.
- (2) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect in relation to—
  - (a) any property, rights or liabilities transferred by or under an order under this Part; or
  - (b) anything done for the purposes of, or in relation to, the transfer of any property, rights or liabilities by or under an order under this Part.
- (3) The provision which may be made under subsection (2)(a) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to any property, rights or liabilities transferred;
  - (b) any property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Minister of the Crown making the order to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to any property, rights or liabilities transferred.
- (4) The provision which may be made under subsection (2)(b) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
  - (b) anything done for the purposes of or in relation to the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Minister of the Crown making the order to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of or in relation to the transfer.
- (5) Regulations under subsection (2) are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In this section—
 

“relevant tax” means income tax, corporation tax, capital gains tax, stamp duty or stamp duty reserve tax;

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“tax provision” means a provision of an enactment about a relevant tax.

## 6 Criminal penalties

- (1) An order under this Part may not make provision to create a new offence that is punishable, or increase the penalty for an existing offence so that it is punishable—
  - (a) on indictment, with imprisonment for a term exceeding two years; or
  - (b) on summary conviction, with—
    - (i) imprisonment for a term exceeding the normal maximum term; or
    - (ii) a fine exceeding level 5 on the standard scale.
- (2) In subsection (1)(b)(i), “the normal maximum term” means—
  - (a) in relation to England and Wales—
    - (i) in the case of a summary offence, 51 weeks; and
    - (ii) in the case of an offence triable either way, twelve months; and
  - (b) in relation to Scotland or Northern Ireland, six months.
- (3) In the case of an offence which, if committed by an adult, is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of—
  - (a) Part 5 of the Criminal Justice Act 1988 (c. 33), or
  - (b) section 292(6) and (7) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
 the reference in subsection (1)(b)(ii) to a fine exceeding level 5 on the standard scale is to be construed as a reference to the statutory maximum.
- (4) If an order under this Part making provision creating an offence, or altering the penalty for an offence, is made before the date on which section 281(5) of the Criminal Justice Act 2003 (c. 44) comes into force, the order must provide that, in relation to a summary offence committed before that date, any reference to a term of imprisonment of 51 weeks is to be read as a reference to six months.
- (5) If an order under this Part making provision creating an offence, or altering the penalty for an offence, is made before [F4 2 May 2022], the order must provide that, in relation to an offence triable either way committed before that date, any reference to a term of imprisonment of twelve months is to be read as a reference to six months.
- (6) Subsection (1) does not apply to provision which merely restates an enactment.

### Textual Amendments

- F4** Words in s. 6(5) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), [Sch. Pt. 1](#)

## 7 Forcible entry etc

- (1) An order under this Part may not make provision to—
  - (a) authorise any forcible entry, search or seizure; or
  - (b) compel the giving of evidence.
- (2) Subsection (1) does not prevent an order under this Part from extending any power for purposes similar to those to which the power applied before the order was made.

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(3) Subsection (1) does not apply to provision which merely restates an enactment.

## 8 Excepted enactments

An order under this Part may not make provision amending or repealing any provision of—

- (a) this Part; or
- (b) the Human Rights Act 1998 (c. 42).

## 9 Scotland

An order under this Part may not, except by virtue of section 1(8) or 2(7), make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.

## 10 Northern Ireland

An order under this Part may not, except by virtue of section 1(8) or 2(7), make provision to amend or repeal any Northern Ireland legislation.

## [<sup>F5</sup>11 Wales

(1) Except with the agreement of the Assembly, an order under this Part may not make provision which would be within the legislative competence of the Assembly if the provision were contained in—

- (a) an Assembly Measure (until the Assembly Act provisions of the Government of Wales Act 2006 come into force), or
- (b) an Act of the Assembly (after those provisions come into force).

(2) An order under this Part may not make any provision—

- (a) conferring a function on the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government,
- (b) modifying or removing a function of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government,
- (c) restating any provision which confers a function on the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or
- (d) that could be made by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government in the exercise of any of their functions,

except with the agreement of the Welsh Ministers.

(3) Subsections (1) and (2)(d) do not apply to any provision of an order under this Part falling within section 1(8) or 2(7).<sup>F5</sup>]

### Textual Amendments

- F5** S. 11 substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1(2), 3, [Sch. 1 para. 146](#)(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the

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first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of [Government of Wales Act 2006 \(c. 32\)](#))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 23A inserted by [2016 c. 12 s. 15](#)