



Regulatory Reform Act 2001

2001 CHAPTER 6

Power to make provision reforming law which imposes burdens

1 Power by order to make provision reforming law which imposes burdens

- (1) Subject to subsections (3) to (5) and to sections 3 to 8, a Minister of the Crown may by order make provision for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity, with a view to one or more of the following objects—
 - (a) the removal or reduction of any of those burdens,
 - (b) the re-enacting of provision having the effect of imposing any of those burdens, in cases where the burden is proportionate to the benefit which is expected to result from the re-enactment,
 - (c) the making of new provision having the effect of imposing a burden which—
 - (i) affects any person in the carrying on of the activity, but
 - (ii) is proportionate to the benefit which is expected to result from its creation, and
 - (d) the removal of inconsistencies and anomalies.
- (2) In subsection (1) “legislation” means the law contained in any provision of—
 - (a) any Act (whether or not in force) which was passed at least two years before the day on which the order is made, or
 - (b) an order under this section or under section 1 of the Deregulation and Contracting Out Act 1994 (c. 40) (in this Act referred to as “the 1994 Act”),but does not include the law contained in any such provision in its application to Scotland where that provision would, if contained in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.
- (3) An order under this section must include provision made by virtue of subsection (1)(a).
- (4) No order under this section may be made for the purpose of reforming the law contained in any provision of an Act if that provision has been amended, otherwise than merely for consequential or incidental purposes—

- (a) by an Act passed not more than two years before the day on which the order is made, or
 - (b) by any subordinate legislation made not more than two years before that day, but this subsection does not prevent an order under this section from re-enacting without substantive amendment any provision which has been so amended.
- (5) An order 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.
- (6) The provision that may be made by order under this section includes—
- (a) provision amending or repealing any enactment,
 - (b) provision creating or imposing, or authorising or requiring the creation or imposition of, anything which would be a burden but for the fact that it affects only a Minister of the Crown or government department, and
 - (c) such incidental, consequential, transitional or supplemental provision as the Minister thinks appropriate.
- (7) An order under this section may make different provision for different areas.

2 Meaning of “burden” and related expressions

- (1) In this Act “burden” includes—
- (a) a restriction, requirement or condition (including one requiring the payment of fees or preventing the incurring of expenditure) or any sanction (whether criminal or otherwise) for failure to observe a restriction or to comply with a requirement or condition, and
 - (b) any limit on the statutory powers of any person (including a limit preventing the charging of fees or the incurring of expenditure),
- but does not include any burden which affects only a Minister of the Crown or government department.
- (2) In this Act—
- (a) any reference to creating or imposing a burden includes a reference to authorising or requiring a burden to be created or imposed,
 - (b) any reference to removing a burden includes a reference to removing the authorisation or requirement by virtue of which a burden may be imposed, and
 - (c) any reference to reducing a burden includes a reference to reducing the authorisation or requirement by virtue of which a burden may be imposed (for example, by restricting the circumstances in which it is authorised or required to be imposed).

3 Limitations on order-making power

- (1) An order under section 1 may be made only if the Minister making the order is of the opinion that the order does not—
- (a) remove any necessary protection, or
 - (b) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise.
- (2) An order under section 1 may create a burden affecting any person in the carrying on of an activity only if the Minister is of the opinion—

- (a) that the provisions of the order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burden being created, and
 - (b) that the extent to which the order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for the order to be made.
- (3) If an order under section 1 creates a new criminal offence, then, subject to subsection (4), that offence shall not be punishable—
- (a) on indictment with imprisonment for a term exceeding two years, or
 - (b) on summary conviction with imprisonment for a term exceeding six months or a fine exceeding level 5 on the standard scale.
- (4) 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 V 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 (3)(b) to level 5 on the standard scale is to be construed as a reference to the statutory maximum.
- (5) An order under section 1 shall not contain any provision—
- (a) providing for any forcible entry, search or seizure, or
 - (b) compelling the giving of evidence,
- unless a provision to that effect is contained in an enactment repealed by the order and the powers conferred by the provision to that effect contained in the order are exercisable for the same purposes as the powers conferred by the repealed enactment or for purposes of a like nature.

4 Statutory instrument procedure

- (1) An order under section 1 shall be made by statutory instrument.
- (2) Subject to subsection (7), no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (3) An order under section 1 may designate specified provisions of the order as subordinate provisions for the purposes of this section; and in the following provisions of this section references to the subordinate provisions of an order are references to the provisions so designated.
- (4) In the following provisions of this section “a subordinate provisions order” means an order under section 1 which contains a statement that it makes only provision which either—
- (a) modifies the subordinate provisions of an order previously made under that section, or
 - (b) is incidental, consequential, transitional or supplemental provision relating to the provision falling within paragraph (a).
- (5) Sections 1(3) and 3(2)(b) do not apply to a subordinate provisions order.
- (6) 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—

Status: This is the original version (as it was originally enacted).

- (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 sections 1 to 3 to a Minister of the Crown shall so far as necessary be construed as being or including a reference to the Assembly.

- (7) Subsection (2) does not apply to a subordinate provisions order, if—
 - (a) it is not made by a Minister of the Crown,
 - (b) the order designating the subordinate provisions concerned (“the main order”) provides that the subordinate provisions order shall be subject to annulment in pursuance of a resolution of either House of Parliament, or
 - (c) the main order provides that the subordinate provisions order—
 - (i) is to be laid before Parliament after being made; and
 - (ii) is to cease to have effect at the end of the relevant period unless before the end of that period it is approved by a resolution of each House of Parliament (but without that affecting anything done under it or the power to make a new order).
- (8) In subsection (7)(c) “relevant period” means a period of twenty-eight days beginning with the day on which the subordinate provisions order is made.
- (9) In reckoning the period of twenty-eight days referred to in subsection (8), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) For the purposes of section 5(1) of the Statutory Instruments Act 1946 (c. 36), provision falling within subsection (7)(b) is to be treated as provision made by an Act.
- (11) Nothing in sections 5 to 8 applies in relation to a subordinate provisions order.

5 Preliminary consultation

- (1) Before a Minister makes an order under section 1, he shall—
 - (a) consult such organisations as appear to him to be representative of interests substantially affected by his proposals,
 - (b) where his proposals relate to the functions of one or more statutory bodies, consult those bodies, or organisations which appear to him to be representative of those bodies,
 - (c) in such cases as he considers appropriate, consult the Law Commission or the Scottish Law Commission,
 - (d) where the provision made by the order would extend to Wales, consult the National Assembly for Wales, and
 - (e) consult such other persons as he considers appropriate.
- (2) In subsection (1) “statutory body” means—
 - (a) a body established by an enactment or by any instrument made under an enactment, or
 - (b) the holder of any office so established.

- (3) If it appears to the Minister, as a result of the consultation required by subsection (1), that it is appropriate to vary the whole or any part of his proposals, he shall undertake such further consultation with respect to the variations as appears to him to be appropriate.
- (4) If, before the day on which this Act is passed, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of subsection (1), those requirements shall to that extent be taken to have been satisfied.

6 Document to be laid before Parliament

- (1) If, after the conclusion of—
 - (a) the consultation required by section 5(1), and
 - (b) any further consultation undertaken as mentioned in subsection 5(3),the Minister considers it appropriate to proceed with the making of an order under section 1, he shall lay before Parliament a document containing his proposals in the form of a draft of the order, together with details of the matters specified in subsection (2).
- (2) The matters referred to in subsection (1) are—
 - (a) the burdens which the existing law affected by the proposals has the effect of imposing,
 - (b) how the proposals further the object mentioned in section 1(1)(a),
 - (c) whether and, if so, how the proposals also further the objects mentioned in section 1(1)(b), (c) and (d),
 - (d) whether the existing law affected by the proposals affords any necessary protection and, if so, how that protection is to be continued,
 - (e) whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom,
 - (f) whether the proposals would have the effect of creating a burden affecting any person in the carrying on of an activity and, if so, how the conditions in section 1(1)(c) and 3(2) are satisfied,
 - (g) whether any provisions of the proposed order are being designated as subordinate provisions for the purposes of section 4 and, if so, why they are being so designated,
 - (h) whether any savings or increases in cost are estimated to result from the proposals and, if so,—
 - (i) the reasons why savings or increases in cost should be expected, and
 - (ii) if it is practicable to make an estimate of the amount, that amount and how it is calculated,
 - (i) any benefits (other than savings in cost) which are expected to flow from the implementation of the proposals,
 - (j) any consultation undertaken as required by section 5(1) or (3),
 - (k) any representations received as a result of that consultation, and
 - (l) the changes (if any) which the Minister has made to his original proposals in the light of those representations.

7 Representations made in confidence or containing damaging information

- (1) Subsection (2) applies where a person (“the respondent”), in making any representations as a result of any consultation undertaken as required by section 5(1) or (3), requests that the Minister should not disclose the representations made by the respondent.
- (2) Where this subsection applies, the Minister, in giving details of the representations referred to in section 6(2)(k), shall disclose the fact that the respondent has made representations, but shall not disclose the respondent’s representations except—
 - (a) with the consent of the respondent and, where the information contained in the representations relates to any other person or business, of the person to whom the information relates or of the person for the time being carrying on the business, or
 - (b) in such a manner as not to identify them with that respondent or with that other person or business.
- (3) Where a person, in making any representations as a result of any consultation undertaken as required by section 5(1) or (3), discloses information which relates to a third person, the Minister is not obliged to disclose that information in giving details of the representations referred to in section 6(2)(k) if, or to the extent that—
 - (a) it appears to the Minister that the disclosure of that information could adversely affect the interests of the third person, and
 - (b) the Minister has been unable either to verify the information or to obtain the consent of the third party to the disclosure.
- (4) Subsections (2) and (3) do not affect any disclosure which—
 - (a) is requested during the period for Parliamentary consideration, as defined by section 8(2), by any committee of either House of Parliament charged with reporting on the proposals in question, and
 - (b) is made to that committee.

8 Parliamentary consideration of proposals

- (1) Where a document has been laid before Parliament under section 6(1), no draft of an order under section 1 to give effect (with or without variations) to proposals in that document shall be laid before Parliament until after the expiry of the period for Parliamentary consideration, as defined by subsection (2).
- (2) In this section “the period for Parliamentary consideration”, in relation to a document, means the period of sixty days beginning on the day on which it was laid before Parliament.
- (3) In reckoning the period of sixty days referred to in subsection (2), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
- (4) In preparing a draft of an order under section 1 to give effect, with or without variations, to proposals in a document laid before Parliament under section 6(1), the Minister concerned shall have regard to any representations made during the period for Parliamentary consideration and, in particular, to any resolution or report of, or of any committee of, either House of Parliament with regard to the document.

- (5) Together with a draft of an order laid before Parliament under section 4(2), the Minister concerned shall lay a statement giving details of—
 - (a) any representations, resolution or report falling within subsection (4); and
 - (b) the changes (if any) which, in the light of any such representations, resolution or report, the Minister has made to his proposals as contained in the document previously laid before Parliament under section 6(1).
- (6) Section 7 shall apply in relation to the representations referred to in subsection (5)(a) as it applies in relation to the representations referred to in section 6(2)(k), but with the omission of subsection (4).