

REGULATORY REFORM ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: Preliminary consultation

91. This section sets out the first steps in the procedure for making an order, and is based on section 3 of the 1994 Act, with some additions to take account of the widened power. *Subsection (1)* lists those parties who must be consulted by a Minister before he takes his proposals any further. Under paragraph (c) the Minister is required to consult the Law Commission and/or Scottish Law Commission “in such cases as he considers appropriate”. The circumstances in which this might be the case would be when one of the Commissions had relevant experience concerning the subject-area covered by the order, perhaps because it was within the current or recent programme of work. It is envisaged that this would be likely in cases where the reform touched on the common law or where the removal of inconsistencies and anomalies was contemplated. Under paragraph (d) the Minister is also required to consult the National Assembly for Wales when provision made by the order would extend to (i.e. apply within) Wales.
92. If the Minister varies his proposals as a result of the consultation he has undertaken, *subsection (3)* requires him to consult again as appropriate. The subsection makes clear that the Minister does not have to repeat the whole consultation exercise; the additional consultation is only in respect of those elements of his proposal that he has changed and might involve only those consultees affected by the change.
93. *Subsection (4)* allows any proposal that has undergone the consultation process before the Bill was passed to be carried over, without having to repeat the consultation. A form of words was agreed with the current scrutiny Committees for insertion in any consultation documents on prospective use of the power, and can be found at **Annex K**.