

# LEGISLATIVE AND REGULATORY REFORM ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Order-Making Powers**

##### **Restrictions**

##### *Section 4: Subordinate legislation*

57. [Section 4](#) places certain restrictions on the ability of orders under this Part to confer or transfer a function of legislating. The definition of “function of legislating” is given by subsection (7).
58. Subsection (1) provides that a function of legislating can only be conferred on, or transferred to, a person within one of the following three categories. These are:
- a Minister of the Crown. (This is subject to subsections (3) to (5).)
  - any person on or to whom functions are conferred or have been transferred by an enactment (for example, local authorities, or regulatory bodies).
  - a body which, or the holder of an office which, is created by the order. This will enable an order which is creating a new body or office (under section 1(7)(b) or 2(5)(a)) and transferring other functions to that body or office, at the same time to confer on that body or office a function of legislating.
59. Subsection (2) explicitly prevents an order making provision authorising the further delegation of any function of legislating.
60. In the case that a provision confers a function of legislating on a Minister of the Crown, this is restricted by the conditions set out in subsections (4) and (5). The condition in subsection (4) is that the Minister must exercise the function of legislating which has been conferred on him by making a statutory instrument. The condition in subsection (5) is that such a statutory instrument must be subject to either the negative resolution procedure or the affirmative resolution procedure.
61. It will be for the Minister making the order conferring or transferring the function, to decide which of these is appropriate in the particular case. Where the negative resolution procedure is to apply, subsection (5)(a) provides that the procedure set out in section 5(1) of the Statutory Instruments Act 1946 will apply to the statutory instrument. This procedure is that the instrument shall be laid before Parliament after being made and shall be annulled if, within 40 days of laying, either House makes a resolution that it should be annulled. These conditions do not apply where an order confers a function of legislating on someone other than a Minister, for example where the function of making bylaws is conferred upon a local authority.

*These notes refer to the Legislative and Regulatory Reform Act  
2006 (c.51) which received Royal Assent on 8 November 2006*

62. It will be necessary for the Minister, when laying an explanatory document before Parliament in accordance with the requirements of section 14, to explain his reasons for conferring a new function of legislating and to justify the procedural requirements he has specified in relation to it.
63. The conditions in section 4 do not apply to provision in an order which is merely restating an existing enactment. So this section would not prevent an order restating a provision which itself conferred a function of legislating but which did not comply with the restrictions in this section.