



Legislative and Regulatory Reform Act 2006

2006 CHAPTER 51

PART 1

ORDER-MAKING POWERS

Procedure

12 Procedure: introductory

- (1) An order under this Part must be made by statutory instrument.
- (2) A Minister may not make an order under this Part unless—
 - (a) he has consulted in accordance with section 13;
 - (b) following that consultation, he has laid a draft order and explanatory document before Parliament in accordance with section 14; and
 - (c) the order is made, as determined under section 15, in accordance with—
 - (i) the negative resolution procedure (see section 16);
 - (ii) the affirmative resolution procedure (see section 17); or
 - (iii) the super-affirmative resolution procedure (see section 18).

13 Consultation

- (1) If a Minister proposes to make an order under this Part he must—
 - (a) consult such organisations as appear to him to be representative of interests substantially affected by the proposals;
 - (b) where the proposals relate to the functions of one or more statutory bodies, consult those bodies, or persons appearing to him to be representative of those bodies;
 - (c) consult the Assembly where the proposals, so far as applying in or as regards Wales, relate to any matter in relation to which the Assembly

- exercises functions (and where the Assembly’s agreement is not required under section 11);
- (d) in such cases as he considers appropriate, consult the Law Commission, the Scottish Law Commission or the Northern Ireland Law Commission; and
 - (e) consult such other persons as he considers appropriate.
- (2) If, as a result of any consultation required by subsection (1), it appears to the Minister that it is appropriate to change the whole or any part of his proposals, he must undertake such further consultation with respect to the changes as he considers appropriate.
- (3) If, before the day on which this section comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this section, those requirements shall to that extent be taken to have been satisfied.
- (4) Where—
- (a) proposals for an order under this Part are the same as proposals for an order under section 1 of the Regulatory Reform Act 2001 (c. 6),
 - (b) consultation has at any time been undertaken in relation to the proposals under section 5 of that Act, and
 - (c) that consultation satisfied the requirements of that section in relation to the proposals,
- the requirements of this section shall be taken to have been satisfied in relation to the proposals.
- (5) In subsection (1)(b) “statutory body” means—
- (a) a body established by or under any enactment; or
 - (b) the holder of any office so established.

14 Draft order and explanatory document laid before Parliament

- (1) If, after the conclusion of the consultation required by section 13, the Minister considers it appropriate to proceed with the making of an order under this Part, he must lay before Parliament—
- (a) a draft of the order, together with
 - (b) an explanatory document.
- (2) The explanatory document must—
- (a) explain under which power or powers in this Part the provision contained in the order is made;
 - (b) introduce and give reasons for the provision;
 - (c) explain why the Minister considers that—
 - (i) the conditions in section 3(2) are satisfied (where relevant); or
 - (ii) the condition in section 3(4) is satisfied;
 - (d) in the case of an order under section 1, include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens (within the meaning of subsection (2) of that section);
 - (e) identify and give reasons for—
 - (i) any functions of legislating conferred by the order; and

- (ii) the procedural requirements attaching to the exercise of those functions; and
 - (f) give details of—
 - (i) any consultation undertaken under section 13;
 - (ii) any representations received as a result of the consultation;
 - (iii) the changes (if any) made as a result of those representations.
- (3) Where a person making representations in response to consultation under section 13 has requested the Minister not to disclose them, the Minister must not disclose them under subsection (2)(f)(ii) if or to the extent that to do so would (disregarding any connection with proceedings in Parliament) constitute a breach of confidence actionable by any person.
- (4) If information in representations made by a person in response to consultation under section 13 relates to another person, the Minister need not disclose the information under subsection (2)(f)(ii) if or to the extent that—
 - (a) it appears to the Minister that the disclosure of that information could adversely affect the interests of that other person; and
 - (b) the Minister has been unable to obtain the consent of that other person to the disclosure.
- (5) Subsections (3) and (4) do not affect any disclosure that is requested by, and made to, a committee of either House of Parliament charged with reporting on the draft order.
- (6) In subsection (2)(e) “function of legislating” has the same meaning as in section 4.

15 Determination of Parliamentary procedure

- (1) The explanatory document laid with a draft order under section 14 must contain a recommendation by the Minister as to which of the following should apply in relation to the making of an order pursuant to the draft order—
 - (a) the negative resolution procedure (see section 16);
 - (b) the affirmative resolution procedure (see section 17); or
 - (c) the super-affirmative resolution procedure (see section 18).
- (2) The explanatory document must give reasons for the Minister’s recommendation.
- (3) Where the Minister’s recommendation is that the negative resolution procedure should apply, that procedure shall apply unless, within the 30-day period—
 - (a) either House of Parliament requires that the super-affirmative resolution procedure shall apply, in which case that procedure shall apply; or
 - (b) in a case not falling within paragraph (a), either House of Parliament requires that the affirmative resolution procedure shall apply, in which case that procedure shall apply.
- (4) Where the Minister’s recommendation is that the affirmative resolution procedure should apply, that procedure shall apply unless, within the 30-day period, either House of Parliament requires that the super-affirmative resolution procedure shall apply, in which case the super-affirmative resolution procedure shall apply.
- (5) Where the Minister’s recommendation is that the super-affirmative resolution procedure should apply, that procedure shall apply.

- (6) For the purposes of this section a House of Parliament shall be taken to have required a procedure within the 30-day period if—
- (a) that House resolves within that period that that procedure shall apply; or
 - (b) in a case not falling within paragraph (a), a committee of that House charged with reporting on the draft order has recommended within that period that that procedure should apply and the House has not by resolution rejected that recommendation within that period.
- (7) In this section the “30-day period” means the period of 30 days beginning with the day on which the draft order was laid before Parliament under section 14.

16 Negative resolution procedure

- (1) For the purposes of this Part, the “negative resolution procedure” in relation to the making of an order pursuant to a draft order laid under section 14 is as follows.
- (2) The Minister may make an order in the terms of the draft order subject to the following provisions of this section.
- (3) The Minister may not make an order in the terms of the draft order if either House of Parliament so resolves within the 40-day period.
- (4) A committee of either House charged with reporting on the draft order may, at any time after the expiry of the 30-day period and before the expiry of the 40-day period, recommend under this subsection that the Minister not make an order in the terms of the draft order.
- (5) Where a recommendation is made by a committee of either House under subsection (4) in relation to a draft order, the Minister may not make an order in the terms of the draft order unless the recommendation is, in the same Session, rejected by resolution of that House.
- (6) For the purposes of this section an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (7) In this section—
- (a) the “30-day period” has the meaning given by section 15(7); and
 - (b) the “40-day period” means the period of 40 days beginning with the day on which the draft order was laid before Parliament under section 14.
- (8) For the purpose of calculating the 40-day period in a case where a recommendation is made under subsection (4) by a committee of either House but the recommendation is rejected by that House under subsection (5), no account shall be taken of any day between the day on which the recommendation was made and the day on which the recommendation was rejected.

17 Affirmative resolution procedure

- (1) For the purposes of this Part the “affirmative resolution procedure” in relation to the making of an order pursuant to a draft order laid under section 14 is as follows.
- (2) If after the expiry of the 40-day period the draft order is approved by a resolution of each House of Parliament, the Minister may make an order in the terms of the draft.

- (3) However, a committee of either House charged with reporting on the draft order may, at any time after the expiry of the 30-day period and before the expiry of the 40-day period, recommend under this subsection that no further proceedings be taken in relation to the draft order.
- (4) Where a recommendation is made by a committee of either House under subsection (3) in relation to a draft order, no proceedings may be taken in relation to the draft order in that House under subsection (2) unless the recommendation is, in the same Session, rejected by resolution of that House.
- (5) For the purposes of subsection (2) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (6) In this section—
 - (a) the “30-day period” has the meaning given by section 15(7); and
 - (b) the “40-day period” has the meaning given by section 16(7).
- (7) For the purpose of calculating the 40-day period in a case where a recommendation is made under subsection (3) by a committee of either House but the recommendation is rejected by that House under subsection (4), no account shall be taken of any day between the day on which the recommendation was made and the day on which the recommendation was rejected.

18 Super-affirmative resolution procedure

- (1) For the purposes of this Part the “super-affirmative resolution procedure” in relation to the making of an order pursuant to a draft order laid under section 14 is as follows.
- (2) The Minister must have regard to—
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft order,made during the 60-day period with regard to the draft order.
- (3) If, after the expiry of the 60-day period, the Minister wishes to make an order in the terms of the draft, he must lay before Parliament a statement—
 - (a) stating whether any representations were made under subsection (2)(a); and
 - (b) if any representations were so made, giving details of them.
- (4) The Minister may after the laying of such a statement make an order in the terms of the draft if it is approved by a resolution of each House of Parliament.
- (5) However, a committee of either House charged with reporting on the draft order may, at any time after the laying of a statement under subsection (3) and before the draft order is approved by that House under subsection (4), recommend under this subsection that no further proceedings be taken in relation to the draft order.
- (6) Where a recommendation is made by a committee of either House under subsection (5) in relation to a draft order, no proceedings may be taken in relation to the draft order in that House under subsection (4) unless the recommendation is, in the same Session, rejected by resolution of that House.

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

- (7) If, after the expiry of the 60-day period, the Minister wishes to make an order consisting of a version of the draft order with material changes, he must lay before Parliament—
- (a) a revised draft order; and
 - (b) a statement giving details of—
 - (i) any representations made under subsection (2)(a); and
 - (ii) the revisions proposed.
- (8) The Minister may after laying a revised draft order and statement under subsection (7) make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament.
- (9) However, a committee of either House charged with reporting on the revised draft order may, at any time after the revised draft order is laid under subsection (7) and before it is approved by that House under subsection (8), recommend under this subsection that no further proceedings be taken in relation to the revised draft order.
- (10) Where a recommendation is made by a committee of either House under subsection (9) in relation to a revised draft order, no proceedings may be taken in relation to the revised draft order in that House under subsection (8) unless the recommendation is, in the same Session, rejected by resolution of that House.
- (11) Subsections (3) to (5) of section 14 shall apply in relation to the disclosure of representations under subsections (3)(b) and (7)(b)(i) of this section as they apply in relation to the disclosure of representations under subsection (2)(f)(ii) of that section.
- (12) For the purposes of subsections (4) and (8) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (13) In this section the “60-day period” means the period of 60 days beginning with the day on which the draft order was laid before Parliament under section 14.