



# Legislative and Regulatory Reform Act 2006

## 2006 CHAPTER 51

### PART 1

#### ORDER-MAKING POWERS

##### *Powers*

#### **1 Power to remove or reduce burdens**

- (1) A Minister of the Crown may by order under this section make any provision which he considers would serve the purpose in subsection (2).
- (2) That purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.
- (3) In this section “burden” means any of the following—
  - (a) a financial cost;
  - (b) an administrative inconvenience;
  - (c) an obstacle to efficiency, productivity or profitability; or
  - (d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
- (4) Provision may not be made under subsection (1) in relation to any burden which affects only a Minister of the Crown or government department, unless it affects the Minister or department in the exercise of a regulatory function.
- (5) For the purposes of subsection (2), a financial cost or administrative inconvenience may result from the form of any legislation (for example, where the legislation is hard to understand).
- (6) In this section “legislation” means any of the following or a provision of any of the following—

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- (a) a public general Act or local Act (whether passed before or after the commencement of this section), or
  - (b) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument made at any time under an Act referred to in paragraph (a),
- but does not include any instrument which is, or is made under, Northern Ireland legislation.
- (7) Subject to this Part, the provision that may be made under subsection (1) includes—
    - (a) provision abolishing, conferring or transferring, or providing for the delegation of, functions of any description,
    - (b) provision creating or abolishing a body or office,and provision made by amending or repealing any enactment.
  - (8) An order under this section may contain such consequential, supplementary, incidental or transitional provision (including provision made by amending or repealing any enactment or other provision) as the Minister making it considers appropriate.
  - (9) An order under this section may bind the Crown.
  - (10) An order under this section must be made in accordance with this Part.

## **2 Power to promote regulatory principles**

- (1) A Minister of the Crown may by order under this section make any provision which he considers would serve the purpose in subsection (2).
- (2) That purpose is securing that regulatory functions are exercised so as to comply with the principles in subsection (3).
- (3) Those principles are that—
  - (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
  - (b) regulatory activities should be targeted only at cases in which action is needed.
- (4) Subject to this Part, the provision that may be made under subsection (1) for the purpose in subsection (2) includes—
  - (a) provision modifying the way in which a regulatory function is exercised by any person,
  - (b) provision amending the constitution of a body exercising regulatory functions which is established by or under an enactment,
  - (c) provision transferring, or providing for the delegation of, the regulatory functions conferred on any person,and provision made by amending or repealing any enactment.
- (5) The provision referred to in subsection (4)(c) includes provision—
  - (a) to create a new body to which, or a new office to the holder of which, regulatory functions are transferred;
  - (b) to abolish a body from which, or office from the holder of which, regulatory functions are transferred.
- (6) The provision that may be made under subsection (1) does not include provision conferring any new regulatory function or abolishing any regulatory function.

- (7) An order under this section may contain such consequential, supplementary, incidental or transitional provision (including provision made by amending or repealing any enactment or other provision) as the Minister making it considers appropriate.
- (8) An order under this section may bind the Crown.
- (9) An order under this section must be made in accordance with this Part.

### *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.
- (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.

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- (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.
- (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.
- (6) Subsections (1) to (3) 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.

## 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;
  - “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 the date on which section 154(1) of the Criminal Justice Act 2003 (c. 44) comes into force, 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.

## **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.
- (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.

## **11 Wales**

An order under this Part may not make any provision—

- (a) conferring a function on the Assembly,
  - (b) modifying or removing a function of the Assembly, or
  - (c) restating any provision which confers a function on the Assembly,
- except with the agreement of the Assembly.

### *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

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- (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.
- (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.

### *General*

#### **19 Calculation of time periods**

In calculating any period of days for the purposes of sections 15 to 18, 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.

#### **20 Combination with powers under European Communities Act 1972**

- (1) The power to make an order under this Part may be exercised together with, and by the same instrument as, the power to make an order under section 2(2) of the European Communities Act 1972 (c. 68).
- (2) Where the powers referred to in subsection (1) are so exercised—

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- (a) sections 12(2) to 18 above apply to the order under section 2(2) of the European Communities Act 1972 as to the order under this Part; and
- (b) paragraph 2(2) of Schedule 2 to the European Communities Act 1972 does not apply.