

LEGISLATION (WALES) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Miscellaneous

Section 39 – Power to make subordinate legislation in different forms

199. Since 2014, Assembly Acts and Acts of the UK Parliament have usually given the Welsh Ministers powers to make subordinate legislation in the form of regulations rather than orders or rules. However, the Welsh Ministers still have many powers to make orders and rules under earlier legislation. This section enables the Welsh Ministers to exercise powers to make regulations, rules or orders by making any other of those forms of subordinate legislation. For example, a power to make orders could instead be exercised to make regulations.
200. **Section 39** is intended to remedy the situation where it is necessary to make a number of different regulations, rules or orders to give effect to a single policy. It applies to subordinate legislation that is made by statutory instrument, and its purpose is to enable different forms of subordinate legislation to be combined in the same instrument. Making a single statutory instrument may not only be administratively convenient but may also enable the legislation to tell its story more coherently.
201. Subsection (2) makes clear that making subordinate legislation in a different form under this section does not affect the procedure for making an instrument. For example, if an order-making power in an Act is used to make regulations in reliance on this section, the procedure that would apply to orders under the Act still applies.
202. Where other legislation, legal instruments or documents contain references to regulations, rules or orders made under particular powers, subsection (3) adapts those references to take account of the possibility that subordinate legislation under those powers may be made in a different form as a result of this section.
203. **Section 39** applies regardless of the source of the Welsh Ministers' power or duty to make subordinate legislation, and regardless of when the power was conferred or the duty was imposed. However, subsection (4) provides that the power in this section cannot be used where the Welsh Ministers make subordinate legislation that applies otherwise than in relation to Wales under an Act of the UK Parliament or retained direct EU legislation. In other words, the power can be used where the Welsh Ministers make subordinate legislation under an Assembly Act or Measure, and where they make provision that applies only in relation to Wales under an Act of the UK Parliament or retained direct EU legislation.