

LEGISLATION (WALES) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Miscellaneous

Section 40 – Combining subordinate legislation subject to different Assembly procedures

204. **Section 40** makes provision about the combination in a single statutory instrument of subordinate legislation made by the Welsh Ministers using different powers to which different Assembly procedures apply. It ensures that the instrument is subject to the most stringent of the procedures that would otherwise apply. For example, if a statutory instrument contains some provisions that would attract the affirmative procedure and some provisions that would attract the negative procedure, this section means that the affirmative procedure applies to the whole instrument (and that the negative procedure does not apply).
205. Many Acts already contemplate the combination in a single instrument of subordinate legislation made under different powers within the same Act, even where those powers would normally attract different procedures. For example, an Act may provide that any instrument containing regulations under certain powers in the Act is subject to the affirmative procedure (whether or not it also contains regulations under other powers), and that the negative procedure applies to “any other” instrument containing regulations under the Act (i.e. any instrument that does not contain regulations under the powers that attract affirmative procedure).
206. However, provisions about Assembly procedure for statutory instruments do not always deal with this issue, and they do not usually cater for the combination in the same instrument of provisions subject to different procedures that are made under different Acts. The purpose of section 40 is to facilitate the combination in a single statutory instrument of provisions that are subject to different procedures, whether they are made under powers in the same Act or different Acts, and to avoid any procedural difficulties that would be caused by combining provisions in this way.
207. Subsection (1) achieves this by providing that, where more than one Assembly procedure would apply, it is only whichever of those procedures is mentioned first in subsection (2) that applies. Subsection (2) then lists the different types of Assembly procedure from the most stringent to the least stringent, starting with the draft affirmative procedure in paragraph (a) and ending with no procedure in paragraph (e).
208. Subsection (3) makes clear that making subordinate legislation in a combined statutory instrument to which this section applies does not prevent the Welsh Ministers making subordinate legislation in separate instruments in the future, or affect the procedure that applies to any separate instruments they make. For example, if regulations under a power that would normally attract the negative procedure have been included in a statutory instrument that is subject to the affirmative procedure, the Welsh Ministers may make further regulations under that power in a separate statutory instrument that is subject to the negative procedure.