



2014 CHAPTER 8

PART 11

GENERAL POWERS OF COUNCILS

Limits on power conferred by section 82(1)

83.—(1) The Department may not make provision under section 82(1) unless the Department considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.

(2) Those conditions are that—

- (a) the effect of the provision is proportionate to the policy objective intended to be secured by the provision;
- (b) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (c) the provision does not remove any necessary protection;
- (d) 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;
- (e) the provision is not of constitutional significance.

(3) An order under section 82(1) may not make provision for the delegation or transfer of any function of legislating.

(4) For the purposes of subsection (3) a “function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.