These notes refer to the Legislative and Regulatory Reform Act 2006 (c.51) which received Royal Assent on 8 November 2006

LEGISLATIVE AND REGULATORY REFORM ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Legislative and Regulatory Reform Act 2006. They have been prepared by the Cabinet Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. Part 1 of the Act provides powers for a Minister of the Crown to make orders. The powers replace the power in the Regulatory Reform Act 2001 ("the 2001 Act") to make Regulatory Reform Orders ("RROs"). Part 1 sets out what the powers are, the conditions and restrictions which apply to them, and the procedure which must be followed in exercising them.

4. The impetus for this Part comes from the Government's review of the first four years of the operation of the 2001 Act, and from the findings of the Better Regulation Task Force contained in its report *Less is More: Reducing Burdens, Improving Outcomes*, published in March 2005.

5. Part 1 contains two order-making powers which are subject to a number of substantive and procedural protections which are outlined below.

6. It is important to note that in addition to these protections, at second reading in the House of Commons the then Parliamentary Secretary in the Cabinet Office, Mr Jim Murphy MP, gave “a clear undertaking (…) that orders will not be used to implement highly controversial reforms” (Hansard, 9 Feb 2006: Column 1058-1059).

7. Part 2 contains provisions which are intended to promote more effective inspection and enforcement by regulators and to ensure that they exercise their functions in a way that is consistent and proportionate without compromising regulatory standards or outcomes. In order to achieve this, the Act establishes statutory principles of good regulation, based on the Better Regulation Commission's Principles of Good Regulation, to which regulators exercising regulatory functions specified by order must have regard[1]. These statutory principles will also inform a Code of Practice issued by the Minister, to which regulators must have regard when determining any policy or principles by reference to which they exercise specified regulatory functions.

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1 From 1st January 2006, the Better Regulation Commission (BRC) took over the duties of the Better Regulation Task Force. The BRC is an independent body whose terms of reference are to advise the Government on action to reduce unnecessary regulatory and administrative burdens; and to ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted.

8. Part 2 has its origins in the recommendations of a review entitled *Reducing administrative burdens: effective inspection and enforcement*, which the Government appointed Mr Philip Hampton to lead.

9. Part 3 makes provision about legislation relating to the European Communities. In the first place it amends the Interpretation Act 1978 ("the 1978 Act") to make provision about references in domestic legislation to Community instruments which have already been amended at the time that the domestic legislation is made; and to make provision about references in domestic legislation relating to the European Economic Area. In the second place, Part 3 makes provision about how Community obligations are implemented in domestic law, primarily in order to reduce the number of domestic instruments that need to be made. Amendments are made to the European Communities Act 1972 ("the 1972 Act") so that: an order, rules or a scheme can be made under section 2(2) of the 1972 Act, as well as regulations; certain subordinate legislation can make ambulatory references to Community instruments; and the power to make a statutory instrument under section 2(2) of the 1972 Act can be combined with the power to make a statutory instrument under another enactment, where the procedural requirements attaching to the exercise of the two powers differ.

10. Part 4 contains supplemental and general provision, and the Schedule to the Act details the legislative provisions which are repealed by the Act.

TERRITORIAL EXTENT

11. This Act extends to the whole of the United Kingdom, subject to the provisions of section 34.

TERRITORIAL APPLICATION: WALES

12. The Act applies in relation to Wales and includes provisions that relate specifically to the powers of the National Assembly for Wales ("the Assembly").

13. Part 1 of the Act provides, at section 11**,** that an order may not make any provision conferring a function on the Assembly, modifying or removing a function of the Assembly, or restating any provision that confers a function on the Assembly, without the agreement of the Assembly.

14. Where the agreement of the Assembly is not required under section 11, a Minister proposing to make an order under the powers in Part 1 must consult the Assembly in accordance with section 13 where the proposals, so far as they apply in Wales, relate to any matter in relation to which the Assembly exercises functions.

15. In Part 2 of the Act, section 24 provides that a Minister may specify, by order, which regulatory functions (as defined in section 32) are covered by the Principles and Code of Practice (sections 21 and 22). However, a Minister may not specify a regulatory function that is exercisable only in or as regards Wales: instead the power to specify such functions, by order, is conferred on the Assembly.

16. Part 3 of the Act contains provisions dealing with legislation relating to the European Communities. Section 27**,** which makes provision to include a power in section 2 of the European Communities Act 1972 ("the 1972 Act") to make orders, rules and schemes in addition to regulations, is the only section in that Part that has separate provision in respect of Wales. Subsection (3) of section 27 contains an amendment to the Government of Wales Act 1998 consequential on the amendment made by subsection (1). Subsection (6) further provides that the power of a Minister of the Crown to make an order under subsection (5) to amend enactments or subordinate legislation referring to regulations made under section 2(2) of the 1972 Act to include a reference to any order, rules or scheme, shall also be exercisable by the Assembly, insofar as it relates to a matter in respect of which functions are exercisable by the Assembly. This power is exercisable by statutory instrument (subsection (7)).

17. Amendments will be made to the Act to reflect significant changes to the devolution arrangements in Wales made by the Government of Wales Act 2006. The amendments will be made by order under the powers in sections 157 and 160 of that Act.

COMMENTARY ON SECTIONS

Part 1: Order-Making Powers

Powers

Section 1: Power to remove or reduce burdens

18. Section 1 confers power on a Minister of the Crown to make any provision by order which he considers would serve the purpose of removing or reducing any burden, or removing or reducing the overall burdens, to which any person is subject as a direct or indirect result of any legislation. Legislation is defined in subsection (6). The power is a broad one, and it is intended to be so. In the first place, it may be noted that the Minister may make "any" provision which would serve the purpose stated, subject only to the restrictions set out in the Act.

19. Subsection (3) defines a "burden" as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

20. *A financial cost:* this limb of the definition covers any financial costs, including administrative costs and policy or 'compliance' costs resulting from understanding and complying with legislation. So, for instance, section 1 could be used to reduce or remove the costs imposed on a business or a charity resulting from filling in health and safety forms required by legislation. It might be used to reduce or remove the costs resulting for a person from legislation of having to apply for a licence or consent. It could also be used to reduce the costs which result from making arrangements to avoid a situation where a criminal offence would be committed. In such a situation, to remove the sanction and repeal the underlying offence would be to reduce those costs.

21. *An administrative inconvenience*: this limb of the definition covers administrative inconvenience even where it does not result in a financial cost. For example, a requirement on an individual to fill in a form may not result in financial cost, but could be inconvenient for that person.

22. *An obstacle to efficiency, productivity or profitability:* in some cases legislation may not impose a cost on a person but may prevent them from being as efficient, productive or profitable as they would otherwise be.

23. "*Obstacle to efficiency*" could cover, for example, obstacles to the economically or administratively efficient exercise of a person's or body's existing statutory functions. This could include provisions in legislation which prevent a regulator from carrying out its functions of inspection or enforcement in a risk-based way, thus requiring the regulator to expend administrative effort and cost on low risk activities or operators, and preventing it targeting its resources at the high risk. (Note however that "efficiency" should be distinguished from "effectiveness": it cannot be said to be an obstacle to "efficiency" that a person exercising certain statutory functions does not have other functions which might be desirable from a policy perspective, even if those other functions would make them more effective in achieving certain policy objectives.)

24. "*Obstacle to productivity*": a tenancy restriction preventing farmers diversifying into non-agricultural activities to improve the viability of their business, might be an example of a bar on productivity. So an order could remove or reduce a restriction resulting from legislation that farmers may only use certain land for agricultural purposes.

25. Obstacles to competition, innovation, investment, skills or enterprise can constitute obstacles to productivity. Where a Minister is satisfied, on the basis of relevant evidence that such an obstacle is an obstacle to productivity, then this limb of the definition of burden would cover it. For instance, if legislation currently limits the patenting of goods to certain classes of product, and if the Minister were satisfied that extending those classes to include a new class of goods would remove an obstacle to innovation which was an obstacle to productivity, extending those limits would be possible under this section.

26. "*Obstacle to profitability*": this limb of the definition could cover the *opportunity costs* of complying with legislation, for example, where compliance with the legislation means the loss of a financial benefit that could otherwise have been obtained. Restrictions on selling alcohol, or on Sunday trading might in principle be examples of obstacles to profitability. So for example an order could remove or reduce restrictions on the sale of methylated spirits on a Sunday. There are no actual costs imposed upon a business when it is prohibited from trading such spirits on a Sunday, only a loss of profit as a result of the ban.

27. *A sanction which affects the carrying on of any lawful activity*: this limb of the definition covers sanctions, criminal or otherwise, which affect the carrying on of a lawful activity. This could include a criminal sanction which affects the carrying on of an activity which is itself lawful, such as supplying financial services. It could not include sanctions for activities which are themselves unlawful, such as dealing in class A drugs, or people trafficking. So an order could remove or reduce criminal sanctions which relate to the carrying on of a particular lawful activity, but not sanctions relating to offences under the general criminal law. It is therefore possible by order to reduce the sanction for a particular criminal offence where it is no longer considered to be targeted or appropriate, for example by replacing the sanction of a term of imprisonment with a fine.

28. The reference in subsection (2) to "removing or reducing the overall burdens" is intended to allow for one statutory regime to be replaced by another which is less burdensome overall for a person. This means that existing burdens can be increased, or a new burden could be imposed, where this is for the purpose of reducing the overall burdens resulting from legislation to which a person is subject.

29. The power enables a Minister to make an order which he considers would serve the purpose of removing or reducing a burden for *a person.* The Minister must therefore consider that there is a person for whom, comparing the position before and after the order has been made, a burden, or the overall burdens, will have been removed or reduced.

30. The burden must *result from legislation*. So an order cannot make provision to reduce costs, unless those costs result from legislation (as defined in subsection (6)). The power in section 1 can therefore only be used to reform an area where there is already a legislative framework. It could be used to replace one statutory regime with another where this removes or reduces burdens, but it cannot be used to introduce an entirely new regulatory regime. So, for example, it would not be possible to create an entirely new legislative framework relating to a new area of consumer protection, employment rights or environmental protection simply because there are considered to be good policy reasons for doing so.

31. The burden may, however, be the direct *or indirect* result of legislation. An example of a direct burden resulting from legislation would be the costs incurred directly by a regulated business as a result of complying with legislation. An example of an indirect

cost would be the costs such a business were to pass on in the form of higher prices to its customers as a result.

32. It is possible under section 1 to remove or reduce a burden for one person and in so doing *impose or increase a burden for another*, but only if the increase is the *result* of the removal or reduction of a burden on a person. So for instance it would be possible by order under section 1 to remove from those being regulated costly requirements to provide information to the regulator, even though this would have the effect of increasing the cost for the regulator of monitoring the sector for which it is responsible.

33. It is also possible to *impose or increase a burden for a person* where this serves the purpose of a wider change which removes or reduces burdens on them. An order could for example remove obligations in legislation to supply fifty items of information and replace this requirement with an obligation to supply ten others. An order could also remove a custodial sentence from an offence but increase the maximum fine for it, where this is for the purpose of removing or reducing burdens. However, it would not be possible for an order to remove one burden but to impose an entirely unrelated burden.

34. Subsection (4) has the effect that it will not be possible to remove or reduce burdens which only affect a Minister of the Crown or government department, except where the burden affects the Minister or department in the exercise of a regulatory function. 'Regulatory function' is defined in section 32.

35. Subsection (5) provides that for the purposes of subsection (2), financial cost or administrative inconvenience may result from the *form of legislation*, for example where the legislation is hard to understand. This would cover a case in which the meaning of the legislation can in the end be determined, but only as a result of a disproportionate amount of effort. For example, where provisions governing an area are contained in many different pieces of legislation, the order-making power in section 1 could be used to restate and bring together the relevant provisions so that it is less costly or inconvenient to understand them. Similarly, for example, where a provision was obscurely drafted the order-making power in section 1 could be used to restate the provision more clearly so that it is less costly or inconvenient to understand it.

36. This subsection would also cover a case in which the meaning of legislation is unclear, for example because it is ambiguous. If the ambiguity resulted in costs or administrative inconvenience, the order-making power in section 1 could be used to remove it.

37. 'Legislation' is defined in subsection (6) and includes local as well as public general Acts, and subordinate legislation as well as primary legislation. Local Acts cover limited areas or particular bodies or institutions, such as particular charities or port authorities: their chapter numbers are small roman numerals. The definition of 'legislation' does not include any instrument which is Northern Ireland legislation within the meaning of section 24 of the 1978 Act (such as Acts of the Parliament of Northern Ireland, or Orders in Council made under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972).

38. Subsection (7) provides that the provision that can be made by order under this section includes provision which:

- abolishes, confers or transfers, or provides for the delegation of, functions of any description (which would include functions of legislating);
- creates or abolishes a body or office;
- amends or repeals any enactment.

39. An order under this section could transfer regulatory functions from one regulator to another where this was, for example, for the purpose of reducing burdens upon those being regulated by reducing the number of separate inspections or requirements to provide information to which they were subject.

40. Subsection (8) confers power for an order made under this section to make such *consequential, supplementary, incidental or transitional provision* as the Minister considers appropriate, including provision amending or repealing any enactment or other provision. Although "enactment" does not include an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament (as a result of Schedule 1 to the 1978 Act), subsection (8) enables the amendment or repeal of *other provision* for consequential, supplementary, incidental or transitional purposes, and this extends to the amendment or repeal of Acts of the Scottish Parliament and instruments made under them. Whilst an order under this section cannot remove or reduce burdens arising from Northern Ireland legislation, provision can be made under this subsection amending or repealing Northern Ireland legislation for consequential, supplementary, incidental or transitional purposes.

41. The effect of this power (and the equivalent power in section 2(7)), taken with the restrictions in sections 9 and 10, is that the only type of provision an order can make amending or repealing legislation which would be within the legislative competence of the Scottish Parliament, or which is Northern Ireland legislation, is provision which is consequential, supplementary, incidental or transitional.

Section 2: Power to promote regulatory principles

42. Section 2 provides a power for a Minister of the Crown to make provision by order which he considers would serve the purpose of ensuring that regulatory functions are exercised so as to comply with the Better Regulation Commission's five Principles of Good Regulation. ("Regulatory function" is defined in section 32.) These Principles of Good Regulation (subsection (3)) are that regulatory activities should be carried out in a way that is transparent, accountable, proportionate, consistent, and should be targeted only at cases in which action is needed.

43. Subsection (4) provides that orders made under this section can include provision which:

- modifies the way in which a regulatory function is exercised by any person;
- amends the constitution of a body exercising regulatory functions which is established by or under an enactment;
- transfers, or provides for the delegation of, regulatory functions from one person to another;
- amends or repeals any enactment.

44. One example of modifying the way in which regulatory functions are exercised by a person would be to use the power under this section to impose a requirement on a regulator, when carrying out regulatory functions, to have regard to views of a body representing consumers in that area, so that the regulator's regulatory activities are carried out in a way that is more accountable to consumers. Section 2 could also enable provision to be made requiring a regulator to exercise its functions on the basis of risk-assessment, so that its activities were proportionate to risk, with the result that the burden of enforcement on the highest-risk is increased, but falls least upon those with the best record of compliance.

45. An example of amending by order the constitution of a body exercising regulatory functions set up by or under an enactment, would be amending the statute governing a regulator so as to provide that it has a Board structure, with at least half of the Board comprised of non-executive directors, for the purpose of securing that its regulatory activities are carried out in a way which is accountable and transparent.

46. An example of transferring functions from one person to another would be where two regulators are operating in separate but closely related areas, and where it is considered appropriate to transfer the regulatory functions so that they are exercised by a single

regulator (whether one of the existing regulators, or a new one). This could be for the purpose of securing that regulatory activities are more proportionate across the range of activities being regulated. It may also be for the purpose of securing that regulatory activities are carried out in a more consistent way across the two separate but related areas of activity.

47. Subsection (5) further provides that provision transferring or providing for the delegation of regulatory functions can include provision which:

- creates a new body to which, or a new office to the holder of which, these regulatory functions are then transferred ; or
- abolishes a body from which, or office from the holder of which, regulatory functions have been transferred, as a result of which the body or office has become obsolete.

48. So in the context of transferring regulatory functions, it would be possible to create a new body to carry out the functions of an existing regulator, and to abolish a body carrying out regulatory functions which becomes obsolete once its functions have all been removed.

49. Subsection (6) provides that the provision that can be made under this section does not include provision conferring any new regulatory function or abolishing any regulatory function. So the provision that can be made under this section does not include provision changing existing regulatory functions conferred on any person by an enactment, and it is only possible to abolish a body carrying out regulatory functions if those functions continue to be exercised, having been transferred to another person.

50. Subsection (7) confers power for an order made under this section to make such consequential, supplementary, incidental or transitional provision as the Minister considers appropriate. This power includes power to make provision amending or repealing *any enactment or other provision*, including Acts of the Scottish Parliament, Scottish statutory instruments, and Northern Ireland legislation.

Restrictions

Section 3: Preconditions

51. Section 3 imposes conditions which the Minister must consider to be satisfied before he can make an order containing provision under section 1(1) or 2(1).

52. The conditions set out in subsection (2) apply (where relevant) to provision made under sections 1(1) or 2(2) which is not merely restating an enactment (as defined in subsection (5)).

53. There are six conditions set out in subsection (2).

- The first condition is that there are no non-legislative solutions which will satisfactorily remedy the difficulty which the order is intended to address. An example of a non-legislative solution might be the issuing of guidance about a particular legislative regime.
- The second condition is that the effect of the provision made by the order is proportionate to its policy objective. A policy objective might be able to be achieved in a number of different ways, some of which may be far more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. The Minister must consider that this is not the case, and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- The third condition is that the provision made by the order, taken as a whole, strikes a fair balance between the public interest and the interests of the persons adversely affected by the order. So it will be possible to make an order which will have

an adverse effect on the interests of one or more persons only if the Minister is satisfied that it will also have beneficial effects which are in the public interest. Whenever an order imposes or increases a burden for a person, it adversely affects their interests, so the Minister must take into account any new or increased burdens when considering whether or not this condition is met.

- The fourth condition is that the provision made by the order does not remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage. Protections which would have been thought to be necessary in the past may no longer be considered necessary.
- The fifth condition is that the provision made by the order will not prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be appropriate to take away from people using an order, and has certain parallels with the concept of 'legitimate expectation'. Any right conferred or protected by the European Convention on Human Rights is a right which a person might reasonably expect to keep.
- The sixth condition is that the provision made by the order is not constitutionally significant. This condition would allow orders to amend enactments which are considered to be constitutionally significant, but only if the amendments are not themselves constitutionally significant.

54. The Minister is also required to set out in the explanatory document which he must lay before Parliament (section 14) *why* he considers that these conditions are met.

55. Where provision made under section 1(1) or 2(1) is merely restating an enactment, the six conditions listed in subsection (2) do not apply. However subsections (3) and (4) have the effect that a Minister may only make provision of this type in an order if he is satisfied that the provision would make the law more accessible or more easily understood (for example, by consolidating disparate pieces of legislation or restating existing provisions in accordance with modern drafting practices).

56. The meaning of the term “to restate” is given in subsection (5). This also applies in relation to sections 4 to 7.

Section 4: Subordinate legislation

57. Section 4 places certain restrictions on the ability of orders under this Part to confer or transfer a function of legislating. The definition of “function of legislating” is given by subsection (7).

58. Subsection (1) provides that a function of legislating can only be conferred on, or transferred to, a person within one of the following three categories. These are:

- a Minister of the Crown. (This is subject to subsections (3) to (5).)
- any person on or to whom functions are conferred or have been transferred by an enactment (for example, local authorities, or regulatory bodies).
- a body which, or the holder of an office which, is created by the order. This will enable an order which is creating a new body or office (under section 1(7)(b) or 2(5)(a)) and transferring other functions to that body or office, at the same time to confer on that body or office a function of legislating.

59. Subsection (2) explicitly prevents an order making provision authorising the further delegation of any function of legislating.

60. In the case that a provision confers a function of legislating on a Minister of the Crown, this is restricted by the conditions set out in subsections (4) and (5). The condition in

subsection (4) is that the Minister must exercise the function of legislating which has been conferred on him by making a statutory instrument. The condition in subsection (5) is that such a statutory instrument must be subject to either the negative resolution procedure or the affirmative resolution procedure.

61. It will be for the Minister making the order conferring or transferring the function, to decide which of these is appropriate in the particular case. Where the negative resolution procedure is to apply, subsection (5)(a) provides that the procedure set out in section 5(1) of the Statutory Instruments Act 1946 will apply to the statutory instrument. This procedure is that the instrument shall be laid before Parliament after being made and shall be annulled if, within 40 days of laying, either House makes a resolution that it should be annulled. These conditions do not apply where an order confers a function of legislating on someone other than a Minister, for example where the function of making bylaws is conferred upon a local authority.

62. It will be necessary for the Minister, when laying an explanatory document before Parliament in accordance with the requirements of section 14, to explain his reasons for conferring a new function of legislating and to justify the procedural requirements he has specified in relation to it.

63. The conditions in section 4 do not apply to provision in an order which is merely restating an existing enactment. So this section would not prevent an order restating a provision which itself conferred a function of legislating but which did not comply with the restrictions in this section.

Section 5: Taxation

64. This section prohibits an order made under this Part from imposing, abolishing or varying any tax.

65. It also contains a separate power enabling the Treasury to make regulations to provide tax neutrality in relation to a transfer of property, rights and liabilities which may arise from the merger of bodies by or under an order made under Part 1. This will enable the Treasury to make appropriate tax provision, at the appropriate time to ensure that a transfer does not give rise to a tax change or confer a tax advantage on either party. For the purposes of this power the relevant taxes are income tax, corporation tax, capital gains tax, stamp duty and stamp duty reserve tax.

66. Regulations made under this section are to be made by statutory instrument, subject to annulment in pursuance of a resolution of the House of Commons.

Section 6: Criminal penalties

67. This section sets limits on the order-making powers in relation to criminal offences and penalties. An order under this Part cannot create a new offence with penalties exceeding those set out in subsections (1) to (3). Nor may it increase the penalty for an existing offence so as to exceed those limits. Subsections (4) and (5) contain transitional provisions until the coming into force of the relevant provisions of the Criminal Justice Act 2003.

68. The maximum penalty that can be imposed when an offender is convicted on indictment is two years imprisonment.

69. The maximum custodial sentence that can be imposed when an offender is convicted summarily is:

- in the case of a summary offence tried in England and Wales, fifty one weeks;
- in the case of an either way offence tried in England and Wales, twelve months;
- in the case of Scotland or Northern Ireland, six months.

70. However, if an order is made before the day on which section 281(5) of the Criminal Justice Act 2003 comes into force, the order must provide that for any summary offence which is committed before that day, any reference in the order to a term of imprisonment of fifty one weeks must be read as a reference to the current lower maximum of six months: subsection (4).

71. Similarly, if an order is made before the day on which section 154(1) of the Criminal Justice Act 2003 comes into force, the order must provide that for any offence triable either way which is committed before that day, any reference in the order to a term of imprisonment of twelve months must be read as a reference to the current lower maximum of six months: subsection (5).

72. The maximum fine that can be imposed when an offender is convicted summarily is provided for by subsections (1)(b)(ii) and (3).

73. The restrictions in this section do not apply where the provision made is merely restating an enactment.

Section 7: Forcible entry etc

74. This section prevents an order under this Part from making provision authorising forcible entry, search or seizure, or compelling the giving of evidence. This does not, however, prevent an order from *extending* an existing power to do any of those things, but it can only do so where the power is extended for purposes similar to those to which the power applied before the order was made. For example, there might be an existing power to search certain buildings in certain circumstances. An order which is making provision for the purpose of removing or reducing burdens, might greatly reduce the circumstances in which a search of those buildings could take place. The order might, however, also extend the existing power in certain limited respects, for purposes similar to the purpose of the original power.

75. The restriction on making provision authorising forcible entry, search or seizure, or compelling the giving of evidence does not apply to provision which is merely restating an enactment.

Section 8: Excepted enactments

76. This section provides that orders made under Part 1 cannot make provision amending or repealing any provision of Part 1 itself, or of the Human Rights Act 1998.

Section 9: Scotland

77. This section prohibits an order made under Part 1 from making provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament. So it prevents the amendment or repeal of Acts of the Scottish Parliament, instruments made under them, or Acts of the Westminster Parliament which make provision about devolved matters (having been passed prior to the passing of the Scotland Act 1998 or, in some cases, afterwards). However, section 9 makes clear that this prohibition does not affect the powers to make consequential, supplementary, incidental or transitional provision in sections 1(8) and 2(7).

Section 10: Northern Ireland

78. This section prevents an order made under Part 1 from amending or repealing any Northern Ireland legislation (within the meaning of section 24 of the 1978 Act), except under the powers to make consequential, supplementary, incidental or transitional provision (sections 1(8) and 2(7)).

Section 11: Wales

79. This section requires the agreement of the Assembly for any provision in an order which confers a function upon the Assembly, modifies or removes a function of the Assembly, or restates a provision conferring a function upon the Assembly.

Procedure

Section 12: Procedure: introductory

80. Section 12 sets out procedural requirements for making orders under sections 1 and 2. The Minister must consult on his proposals for an order (section 13). He must then lay a draft order and an explanatory document before Parliament (section 14). The order must be made by statutory instrument in accordance with the negative resolution procedure (section 16), the affirmative resolution procedure (section 17) or the super-affirmative resolution procedure (section 18). Section 15 sets out how the procedure is to be determined. The Minister must recommend in the explanatory document the procedure he considers appropriate. The Minister's recommended procedure will apply unless either House of Parliament requires a higher level of procedure.

81. Whilst not specifically introduced by section 12, another important aspect of the procedure for orders is that under all three procedures set out in sections 16 to 18, provision is made for an additional mechanism (which might be referred to as a 'veto') enabling a committee of either House charged with reporting on an order to prevent the order from being made.

Section 13: Consultation

82. This section sets out the consultation process which the Minister must follow before making an order under this Part. Subsection (1) lists those persons or bodies that the Minister must consult, depending on the subject matter of the proposals and who is likely to be affected by them.

83. Under paragraph (c) the Minister must consult the Assembly where the proposals, to the extent that they *apply* in or as regards Wales, relate to a matter in relation to which the Assembly has functions. (Note that the requirement does not apply in relation to matters which merely *extend* as a matter of law to Wales, but which have no practical application there.) However paragraph (c) does not apply to provision which adds to or changes the functions of the Assembly, or restates provision conferring a function upon the Assembly, since in this case section 11 requires the consent of the Assembly.

84. Under paragraph (d) the Minister must consult the Law Commission, the Scottish Law Commission or the Northern Ireland Law Commission in such cases as he considers appropriate. This might be the case when one of the Commissions had relevant experience concerning the subject area affected by the order, perhaps because it was within their current or recent programme of work. Under paragraph (e) there is a general requirement that the Minister consult persons other than those listed in paragraphs (a) to (d) if he considers it appropriate.

85. Subsection (2) specifies that if the Minister varies his proposals as a result of the consultation he has undertaken, then he must carry out such further consultation on the changes he has made as he considers appropriate. The Minister does not therefore have to repeat the whole consultation exercise; the additional consultation is only in respect of those elements of his proposal that he has changed and might involve only those consultees affected by the change.

86. Subsections (3) and (4) are transitional provisions. They deal with consultation which has taken place before the date on which these sections come into force.

87. Subsection (3) is meant to allow for consultation to take place before commencement. If any consultation is undertaken before commencement, and that consultation would

to any extent satisfy any of the requirements of section 13, those requirements are, to that extent, taken to have been satisfied. It is not necessary therefore to repeat the consultation.

88. Subsection (4) applies specifically to consultation carried out under the 2001 Act. Where proposals for an order under this Part are the same as proposals for an order under section 1 of the 2001 Act and consultation has been carried out on those proposals in accordance with the requirements of that Act, then consultation will be taken to have been satisfied for the purposes of this section (even where the proposals have been varied following consultation under the 2001 Act and it was appropriate that no further consultation be undertaken). This means that such proposals do not need to be consulted on again.

Section 14: Draft order and explanatory document laid before Parliament

89. This section requires a Minister to lay before Parliament a draft of the order he wishes to make and an explanatory document. The information contained in the explanatory document is intended to assist Parliament in scrutinising the order. The list of matters that must be covered by the explanatory document is given in subsection (2). These include a general requirement for the Minister to give reasons for the provision he wishes to make, an explanation as to why the Minister considers that the preconditions in section 3 are satisfied, and information about the consultation he has undertaken.

90. Where the Minister wishes to make an order under section 1, subsection (2)(d) requires him (so far as it is appropriate) to provide an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens. The requirement to make and give such an assessment is intended to be proportionate to the nature of the order being made. In some cases the effect of the order will be worthwhile but minor and will not merit a very detailed assessment, in which case a brief statement will be included in the explanatory document to the order. Where appropriate it is expected that requirement under subsection (2)(d) for an assessment of the extent to which the provision would remove or reduce any burden or burdens may be met by quoting the assessment made in an Impact Assessment, or attaching that document to the explanatory document.

91. Subsection (2)(e) requires the Minister to identify and give reasons for any functions of legislating conferred by the order, and the procedural requirements which will have to be complied with when those functions are exercised.

92. Subsections (3), (4) and (5) set out provisions concerning the disclosure of representations made in response to consultation under section 13. Where a person makes representations in response to consultation and asks the Minister not to disclose those representations, the Minister must not disclose them in the explanatory document where such disclosure would constitute an actionable breach of confidence by any person (were it not for Parliamentary privilege). The Minister *need not* disclose information contained in representations relating to a person other than the consultee if it appears to him that such disclosure could adversely affect the interests of that other person and he has been unable to obtain the consent of that person. It should be noted that subsection (5) provides that these provisions do not affect any disclosure that is requested by, and made to, a Parliamentary committee charged with reporting on draft orders. So even if such information is withheld from the explanatory document, this would not prevent a Minister from providing the information to the Parliamentary committees on request.

Section 15: Determination of Parliamentary procedure

93. This section sets out the procedure for determining which of the three alternative types of parliamentary procedure will apply to an order.

94. Subsections (1) and (2) require the explanatory document laid by the Minister under section 14 to contain his recommendation as to which Parliamentary procedure should apply and his reasons for this recommendation. The level of scrutiny recommended will depend on his view of the complexity and impact of the order, and may be informed by representations on the proposals received during the consultation process.

95. Subsections (3) to (5) provide that the Minister's recommendation for a procedure shall apply unless either House of Parliament requires that a more onerous procedure shall apply.

96. Subsection (6) sets out the two different ways in which a House is taken to have required a particular procedure. A House may require a procedure by resolving (within the period of 30 days beginning on the day on which the draft order was laid before Parliament) that a particular procedure shall apply. If that does not happen, a committee of that House which is responsible for reporting on the order may make a recommendation that a particular procedure should apply, which will take effect unless the recommendation is subsequently rejected by a resolution of the relevant House. In order to be effective in determining which procedure will apply to the order, both the recommendation of the committee and any resolution of the House rejecting it must be made within the period of 30 days beginning on the day the draft order was laid before Parliament.

97. So, if the Minister recommends the negative resolution procedure, this will apply unless, within 30 days, either House requires the affirmative resolution or super-affirmative resolution procedure, in which case that higher level of procedure will apply instead (subsection (3)). Similarly, if the Minister recommends the affirmative resolution procedure, that will apply unless, within 30 days, either House requires the super-affirmative procedure, in which case that will apply instead (subsection (4)). If the Minister recommends the super-affirmative procedure from the start, then that is the procedure that will apply (subsection (5)).

98. In effect, either House is able to require the level of procedure they consider appropriate, although it should be noted that the committees can require a higher, but not a lower, level of procedure. There is no need for both Houses to agree on the necessary level of procedure; a resolution or recommendation from either House is sufficient to increase the level of procedure.

99. Parliamentary scrutiny of orders is currently undertaken by the House of Commons Regulatory Reform Committee and the House of Lords Delegated Powers and Regulatory Reform Committee.

Section 16: Negative resolution procedure

100. This section sets out the procedure which will apply where an order is to be made under the negative resolution procedure. The Minister may make an order in the terms of the draft he laid (allowing for any non-material changes he wishes to make) unless, within 40 days of the draft order being laid, either House of Parliament passes a resolution that the order may not be made. (The ability to make non-material changes to the draft order would permit, for example, the correction of any typographical errors identified by the committees.)

101. When the draft order is laid before Parliament, it is scrutinised simultaneously by a committee of each House charged with reporting to the House on the order. Subsection (4) provides that the relevant committee of either House can, at any time after the expiry of the period of 30 days beginning on the day the draft order was laid before Parliament and before the expiry of the period of 40 days beginning on the day the draft order was laid before Parliament, require that the Minister not make an order in the terms of the draft order, by making a recommendation in those terms. A committee may make such a recommendation on any grounds and, in the event that it does so, the Minister may not make the order unless the recommendation is overturned by a resolution of the relevant House in the same Parliamentary session. This provision (which is mirrored

in the affirmative resolution and supper-affirmative resolution procedures) therefore confers the ability on a committee of either House to prevent an order from being made.

102. Where a recommendation made by a committee is subsequently overturned by a resolution of the relevant House, subsection (8) provides that, when calculating the 40-day period, no account is taken of the days between the committee making the recommendation and the House overturning it. This ensures that, should a recommendation of a committee be overturned by the relevant House more than 40 calendar days after the laying of the draft order, each House nevertheless has the opportunity to resolve against the making of the order under subsection (3).

Section 17: Affirmative resolution procedure

103. This section sets out the procedure which will apply where an order is to be made under the affirmative resolution procedure. The Minister may make an order in the terms of the draft (allowing for any non-material drafting changes) only if, after 40 days of the draft order being laid before Parliament, the draft order is approved by a resolution of each House of Parliament. Non-material drafting changes might be necessary as a result of any change of procedure the order was subject to (under the provisions in section 15).

104. When the draft order is laid before Parliament, it is scrutinised simultaneously by a committee of each House charged with reporting to the House on the order. Subsection (3) provides that the relevant committee of either House can, at any time after the expiry of the period of 30 days beginning on the day the draft order was laid before Parliament and before the expiry of the period of 40 days beginning on the day the draft order was laid before Parliament, require that no further proceedings be taken on the draft by making a recommendation in those terms. This recommendation may be made on any grounds and, in the event that a committee makes such a recommendation, no further proceedings may be taken in relation to the draft order unless the recommendation is overturned by a resolution of the relevant House in the same Parliamentary session. Thus, unless overturned, the committee's recommendation will mean that the House will not proceed to an affirmative resolution and the Minister will therefore be unable to make the order. A committee of either House is thus able to prevent an order from being made.

105. Subsection (7) makes the same provision as section 16(8).

Section 18: Super-affirmative resolution procedure

106. This section sets out the procedure which will apply where an order is to be made under the super-affirmative procedure.

107. This is a two-stage procedure during which there is opportunity for the draft order to be revised by the Minister. During the initial period of 60 days beginning with the day on which the draft order was laid before Parliament, the relevant Parliamentary committees simultaneously consider and may report on the draft order, or either House may make a resolution with regard to the draft order. The Minister must have regard to any such reports and resolutions, as well as to any other representations made about the draft order during the 60-day period. Once the 60-day period has expired, if the Minister wishes to make the order with no changes, he must lay a statement in accordance with subsection (3). He may then make an order in the terms of the draft (allowing for any non-material drafting changes) but only if it is approved by a resolution of each House of Parliament.

108. Alternatively, if the Minister wishes to make material changes to the draft order he has laid, he must lay before Parliament a revised draft of the order and a statement in accordance with subsection (7) specifically setting out the revisions he proposes. (This revised draft order will be considered by committees of both Houses.) The Minister may only make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament.

109. Non-material drafting changes might be necessary as a result of any change of procedure the order was subject to (under the provisions in section 15).

110. However, subsections (5) and (9) provide that a committee of either House charged with reporting on the order can require that no further proceedings be taken on the draft by making a recommendation in those terms. This recommendation may be made on any grounds and can be made at any time after the laying of a statement in accordance with subsection (3), or after the laying of a revised draft order in accordance with subsection (8), and before the draft order is approved by a resolution of that House. Where such a recommendation is made by a committee, no further proceedings may be taken in relation to the order unless that recommendation is overturned by a resolution of the relevant House in the same Parliamentary session. This means the House will not proceed to an affirmative resolution and the Minister will therefore be unable to make the order. A committee of either House is thus able to prevent an order from being made.

111. Subsection (11) provides that the restrictions on the disclosure of representations made during consultation, which the Minister must make in the explanatory document laid before Parliament under section 14(2)(f), also apply so as to restrict the disclosure of representations made during the initial 60-day scrutiny period of the super-affirmative procedure which the Minister must make in his statement detailing those representations under subsections (3)(b) and (7)(b)(i).

General

Section 20: Combination with powers under the European Communities Act 1972

112. This section enables the order-making powers under this Part to be exercised together with the power to make an order under section 2(2) of the 1972 Act in a single instrument. This will enable a single order to implement Community law under section 2(2) of the 1972 Act and, for example, to remove or reduce burdens resulting from pre-existing statutory provisions which are thought to be unnecessary or superseded following the implementation of the new EC regulatory requirements.

113. By virtue of subsection (2), the procedure applicable to a combined instrument will be that set out in Part 1 of this Act (including the consultation requirements in section 13, the requirement to lay an explanatory document before Parliament in section 14, and the three alternative Parliamentary procedures in sections 16 to 18), rather than the procedural requirements of section 2(2) of the 1972 Act.

Part 2: Regulators

Exercise of regulatory functions

Section 21: Principles

114. This section sets out principles to which a person must have regard when exercising certain regulatory functions (as defined in section 32). The principles listed are the Better Regulation Commission's Principles of Good Regulation, and provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent, and should be targeted only at cases in which action is needed.

115. The duty to have regard to these principles is subject to any other legal requirement, such as a statutory duty or a requirement of EC law, which will take priority over the duty to have regard to the principles: subsection (3).

116. The regulatory functions to which the duty in the section applies are those specified in an order made under the powers in section 24**.** Those powers are flexible enough to permit an order to specify some regulatory functions of a particular body but not others, if it is considered appropriate for the duty to have regard to the principles to apply in relation to some but not all of its regulatory functions.

Section 22: Code of Practice

117. This section enables a Minister of the Crown to issue and revise a Code of Practice relating to the exercise of regulatory functions.

118. Under subsection (2) any person exercising a regulatory function to which the section applies must have regard to the Code when determining general policies or principles by reference to which that person exercises those functions. So the duty to have regard to the Code in subsection (2) does not apply when the regulatory function itself is exercised.

119. However, under subsection (3), where a person exercises a regulatory function of setting standards or giving general guidance about the exercise of other regulatory functions (whether his own or someone else's regulatory functions), the duty to have regard to the Code applies directly to the exercise of that function of setting standards or giving general guidance. In this case, the duty under subsection (2) does not apply.

120. The duties to have regard to the Code in subsections (2) and (3) are subject to any other legal requirement affecting the exercise of the regulatory function: subsection (4).

121. The functions to which the section applies are those specified by order under section 24. An order under section 24 can specify some of the regulatory functions of a particular body, if it was thought appropriate for the duty to have regard to the Code to apply in relation to some but not all of its functions.

Section 23: Code of Practice: procedure

122. This section sets out the procedure which the Minister must follow when he proposes to issue or revise a Code of Practice.

123. Subsection (2) requires the Minister, when preparing the draft Code, to seek to secure that it is consistent with the principles set out in section 21. This is to avoid discrepancies between the principles and the Code, which could cause difficulties for regulators who are under a duty to have regard to both.

124. The Minister must consult the persons listed in subsection (3) about the draft Code. The draft Code must be laid before Parliament and can be issued by the Minister if it is approved by a resolution of each House of Parliament. While the Code is not itself a statutory instrument, it must be brought into force by a statutory instrument as set out in subsection (6). (The statutory instrument is not subject to any procedural requirements.)

Section 24: Functions to which sections 21 and 22 apply

125. This section makes provision for orders to specify the regulatory functions to which the duties in sections 21 and 22 apply.

126. Under subsection (2) a Minister of the Crown can specify functions, subject to subsections (3) and (5).

127. Subsection (3) places restrictions on the extent to which orders can specify regulatory functions exercisable in Scotland, Northern Ireland or Wales. The power to specify a function exercisable only in or as regards to Wales is given exclusively to the National Assembly for Wales, subject to subsection (5).

128. By virtue of subsection (5), an order under this section cannot specify the regulatory functions of the Gas and Electricity Markets Authority (Ofgem), the Office of Communications (Ofcom), the Office of Rail Regulation (ORR), the Postal Services Commission (PostComm), or the Water Services Regulation Authority (Ofwat).

129. The authority making an order under this section (whether that authority is a Minister of the Crown or the Assembly) must consult in accordance with subsection (6).

130. Subsection (7) provides that different provision can be made for different purposes, which will enable an order made under this section to specify a regulatory function for the purpose of section 21 but not section 22**,** and vice versa.

131. Under subsection (9) a Minister of the Crown may not make an order unless a statutory instrument containing it is laid in draft before, and approved by resolution of, each House of Parliament. (This provision does not apply where an order is made by the Assembly, rather than a Minister.)

Part 3: Legislation Relating to the European Communities Etc

Interpretation of legislation

Section 25: References to Community instruments

132. This section makes provision about domestic legislation which refers to Community instruments - that is, to legal instruments (such as directives or regulations) which are issued by the European Economic Community, the European Coal and Steel Community or Euratom. The section is designed to make the drafting of domestic instruments simpler. The problem that the section addresses is that currently, when domestic legislation refers to a Community instrument which has been amended or applied by other Community instruments, it is necessary to specify all the instruments which have amended or applied it. That can make for very long references.

133. Subsection (1) inserts a new section 20A into the 1978 Act. The effect of the new section is that, where an Act refers to a Community instrument, the reference is to be taken, unless the contrary intention appears, as a reference to that instrument as amended, extended or applied at the date of passing of the Act.

134. The new section only applies in relation to Acts passed after the commencement of the new section on 8th January 2007. Subsection (2) contains a consequential amendment to section 22 of the 1978 Act.

135. By virtue of section 23 of the 1978 Act, the new section will also apply to subordinate legislation, within the meaning of that section, made after the commencement of the new section on 8th January 2007.

136. Subsection (3) of the section contains an amendment to section 24 of the 1978 Act, so that the new section 20A applies to Northern Ireland legislation as it applies to Acts.

137. Subsection (4) amends the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) to secure the same result for Acts of the Scottish Parliament.

Section 26: EEA agreement and EEA state

138. The EEA agreement is an agreement between the European Economic Community, the European Coal and Steel Community, their Member States and the members of the European Free Trade Association (EFTA), the purpose of which is "to promote a continuous and balanced strengthening of trade and economic relations ... with a view to creating a homogeneous European Economic Area".

139. References to an "EEA State" are made frequently in both primary and subordinate legislation, requiring the inclusion of a definition on each occasion. This section introduces standard definitions to avoid having to do this. Subsection (1) inserts definitions of "EEA agreement" and "EEA state" into the 1978 Act. These definitions will apply to all Acts passed after the coming into force of the Legislative and Regulatory Reform Act 2006 on 8th January 2007. By virtue of section 23 of the 1978 Act, the definitions will also apply to all subordinate legislation, within the meaning of that section, made after the coming into force of the Legislative and Regulatory Reform Act 2006.

140. Subsection (2) amends section 24 of the 1978 Act to apply the same definitions to Northern Ireland legislation, within the meaning of that section.

141. Subsection (3) amends the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999 to secure the same result for Acts of the Scottish Parliament. Subsection (4) provides that the amendment only applies to Acts of the Scottish Parliament passed (and Scottish subordinate legislation made) after commencement of the new provision.

Implementation of Community obligations etc

Section 27: Power to make orders, rules and schemes

142. Section 2(2) of the 1972 Act enables the implementation of Community law which is not automatically part of UK law. The existing powers allow for implementation by regulations but do not allow for the making of orders, rules or schemes, and this section is designed to allow section 2(2) to be used in combination with delegated powers in other legislation which enable the making of orders, rules or schemes. So section 27 makes amendments to the 1972 Act and other enactments, so as to enable the power to make subordinate instruments under section 2(2) of the 1972 Act to be exercised not only by making regulations but also by making an order, rules or a scheme.

143. Subsections (3) and (4) make consequential amendments to section 29 of the Government of Wales Act 1998 and Schedule 8 to the Scotland Act 1998.

144. Subsection (5) enables a Minister to make an order or regulations to amend any enactment or subordinate instrument which refers to regulations under section 2(2) of the 1972 Act so that it also includes a reference to any order, rules or scheme made under that section. (Certain of the terms used in subsection (5) are defined in subsection (9).)

145. Subsection (6) enables the devolved administrations to make similar provision.

146. The procedure for exercising this power is set out in subsections (7) and (8). The power is exercisable by statutory instrument (so far as exercisable by a Minister of the Crown, the Scottish Ministers or the Assembly) and, where exercisable by a Northern Ireland department, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

Section 28: Power to make ambulatory references to Community instruments

147. Section 28 inserts a new paragraph 1A into Schedule 2 to the 1972 Act. It enables any "subordinate legislation" (as defined by the new paragraph) which is made for a purpose mentioned in section 2(2) of the 1972 Act, to provide expressly that any reference in that legislation to a Community instrument is to be construed as a reference to the Community instrument in question as amended from time to time. (The definition of "subordinate legislation" in the new paragraph 1A(2) is not restricted to instruments made under section 2(2) of the 1972 Act; it also includes instruments made under other Acts, Acts of the Scottish Parliament or Northern Ireland legislation.) Such provision can only be made where it appears to the person making the legislation that it is necessary or expedient for references to Community instruments in the legislation he is making to have that ambulatory meaning.

148. The reason for this amendment is that it might otherwise be thought that such ambulatory references could not be made under the powers conferred by section 2(2) of the 1972 Act. An example of when this power might be useful is where a Community instrument contains lists or tables of technical detail which might be the subject of frequent updating or amendment. A person making legislation which refers to such an instrument could make use of this power in order to avoid the need for the legislation to have to be amended regularly in the future simply to reflect the updating of the Community instrument.

149. It is worth noting the relationship between this provision and the provision made by section 25. Where subordinate legislation refers to a Community instrument, the 1978 Act, as amended by section 25, will operate as described above so that the reference is taken as a reference to the Community instrument as amended up to that date. But the provision made by section 25 does not allow for the reference to be taken as including the instrument as amended after that date. Paragraph 1A makes provision for this.

Section 29: Combination of powers

150. Section 29 makes provision to enable the power conferred by section 2(2) of the 1972 Act (power to implement Community obligations etc) to be combined with delegated powers in other legislation where the procedures in each case are different.

151. It is generally not possible for a statutory instrument made under an enabling power in one Act to be combined with an instrument made under an enabling power in another, if the Parliamentary procedures to be followed under the two Acts differ. Sometimes it is desired to exercise the power in section 2(2) together with another power to create a single new regime. If the powers are subject to different procedures, it may not be possible to do so in a single instrument. It is this difficulty which is addressed by the section.

152. The Parliamentary procedures which apply to instruments made under section 2(2) of the 1972 Act are set out in paragraph 2 of Schedule 2 to that Act. That paragraph permits a choice of procedure: negative or affirmative.

153. New paragraph 2A allows for instruments which are made under section 2(2) and are subject to the affirmative procedure to be combined with instruments which would otherwise be subject to the negative resolution procedure or other less onerous procedures. In each case, the provision made under the non-section 2(2) power will be subject to the affirmative resolution procedure, rather than the less onerous procedures which would otherwise apply.

154. New paragraph 2B deals with the case where the negative resolution procedure is the one to be followed for the provision to be made under section 2(2) of the 1972 Act. The statutory instrument containing the provision to be made under section 2(2) of the 1972 Act can also contain provision which would otherwise have to be laid before Parliament after being made, but would not be subject to annulment nor have to be approved; or would not be required to be laid before Parliament. In this case, the provision made under the non-section 2(2) power will be subject to the negative resolution procedure rather than the less onerous procedure which would otherwise apply.

155. New paragraph 2C makes the modifications needed so that Scottish statutory instruments can also contain provision made under section 2(2) of the 1972 Act and under other delegated powers in other legislation even though the procedures to be followed under section 2(2) differs from the procedure required by the other legislation.

Part 4: Supplementary and General

Supplementary

Section 30: Repeals and savings

156. Subsection (1) gives effect to the repeals set out in the Schedule to the Act.

157. The remainder of this section provides that, despite the repeal of the 2001 Act, some of its provisions are carried over for certain purposes. Subsection (2) provides that, if a draft RRO has been laid under section 6(1) of the 2001 Act before the day on which this Act comes into force, then that Act will continue to apply to that order. The order may continue to be made as a RRO under the 2001 Act, notwithstanding that Act's repeal.

158. Subsection (3) provides that even though the 2001 Act is repealed by this Act, any RROs which have been made under the power in that Act (either before the day this Act comes into force, or after that day if the order is made by virtue of subsection (2) of this section) are not affected and continue in force.

159. Subsection (4) provides that the repeal of the 2001 Act does not affect the ability of a Minister to make a subordinate provisions order under section 1 of that Act, pursuant to section 4(4) of that Act. This is to ensure that provisions in a RRO made under the 2001 Act which were designated as 'subordinate' in accordance with section 4(3) of that Act can continue to be amended using the procedure provided by that Act.

160. Subsection (5) provides that the repeal of the 2001 Act does not affect the continuation in force of any order which was made under the power in the Deregulation and Contracting Out Act 1994, provided that it continued in force by virtue of section 12(4) of the 2001 Act immediately before this Act comes into force.

Section 31: Consequential amendments

161. Subsection (1) amends section 6(7) of the Deregulation and Contracting Out Act 1994 ('the 1994 Act'). Section 6(7) of the 1994 Act defined "enforcement action" by reference to section 9 of the 2001 Act. As a consequence of the repeal of section 9 of the 2001 Act, subsection (1) substitutes the definition of "enforcement action" which was in section 9 of the 2001 Act into section 6(7) of the 1994 Act.

162. Subsections (2) and (3) amend respectively section 100 of the Local Government Act 2003 and article 17 of the Deregulation and Contracting Out (Northern Ireland) Order 1996. In each case a reference to section 1 of the 2001 Act is replaced by a reference to section 1 or 2 of this Act.

General

Section 32: General interpretation

163. This section defines terms used throughout the Act.

164. Of particular note is the definition of "regulatory function" in subsection (2). This definition applies to the term as it appears in Parts 1 and 2 of the Act.

165. The Act does not attempt to define a "regulator", but rather provides a broad definition of the functions carried out by such persons or bodies. Functions falling within the definition might be exercised by a wide range of bodies including Government departments, local authorities and independent statutory regulators. The first limb of the definition (subsection (2)(a)) is aimed at functions of 'regulating' (for example by producing rules, or imposing requirements, which apply to a category of persons). The second limb (subsection (2)(b)) covers functions of enforcing or securing compliance with such regulation. A regulatory function of making rules or regulations falling within the first limb could be exercised by a different person than the corresponding regulatory function (falling within the second limb of the definition) of securing compliance with or enforcing those rules or regulations.

166. Only functions that fall within this definition may be the subject of an order made under section 2, or may be included in an order made by a Minister (or the Assembly) under section 24. Orders made under section 1 can only reduce or remove burdens which only affect Ministers or Government Departments where they affect the exercise of regulatory functions.

167. Subsection (3)(b) states that the definition of 'regulatory function' does not include any functions exercisable by one of the bodies of the Church of England or by a person holding office in the Church of England, which would otherwise fall within the definition.

168. Subsection (3)(b)(ii) expressly excludes from the definition of regulatory function the function of conducting criminal or civil proceedings. However, this would not exclude the making of a decision to instigate such proceedings.

169. The provision in subsection (4) makes clear that the definition in subsection (2) of regulatory function includes regulation of the activities of providing goods or services, and employing or offering employment to any person.

Section 34: Extent

170. Subsection (1) provides that an order under Part 1 which amends or repeals any enactment extending outside England and Wales, Scotland and Northern Ireland may have the same extent as the enactment. So, for example, an order under Part 1 which amends an Act of Parliament which extends to the Channel Islands and the Isle of Man can have the same extent as that Act.

HANSARD REFERENCES

171. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	*Date*	*Hansard reference*
House of Commons		
Introduction	11 January 2006	Vol. 441 Col 305
Second Reading	9 February 2006	Vol. 442 Cols. 1048-1106
Committee	1st Sitting, 28 February 2006	Standing Committee A
	2nd Sitting, 28 February 2006	
	3rd Sitting, 2 March 2006	
	4th Sitting, 2 March 2006	
	5th Sitting, 7 March 2006	
	6th Sitting, 7 March 2006	
	7th Sitting, 9 March 2006	
	8th Sitting, 9 March 2006	
Report and Third Reading	15 May 2006	Vol. 446 Cols. 709-818
	16 May 2006	Vol. 446 Cols. 871-969
House of Lords		
Introduction	17 May 2006	Vol. 682 Col 271
Second Reading	13 June 2006	Vol. 683 Cols. 120-190
Committee	3 July 2006	Vol. 684 Cols. 12-70 and Cols. 96-120
	10 July 2006	Vol. 684 Cols. 483-511, Cols. 528-541 and Cols. 565-580
	19 July 2006	Vol. 684 Cols 1331-1404
Report	26 October 2006	Vol. 685 Cols 1286-1312 and Cols 1343-1394
Third Reading	2 November 2006	Vol. 686 Cols 408 - 428

Stage	***Date***	***Hansard reference***
House of Commons		
Commons consideration of Lords amendments	7 November 2006	Vol. 451 Cols 732 - 764
Royal Assent - 8 November 2006	House of Lords Hansard Vol 686 Col 750	
	House of Commons Hansard Vol 451 Col 825	