



# Public Bodies Act 2011

## 2011 CHAPTER 24

### PART 1

#### GENERAL ORDER-MAKING POWERS

##### *Powers of Ministers: supplementary*

#### **7 Restrictions on Ministerial powers**

- (1) The modification or transfer of a function by an order under sections 1 to 5 must not prevent it (to the extent that it continues to be exercisable) from being exercised independently of Ministers in any of the following cases.
- (2) Those cases are—
  - (a) where the function is a judicial function (whether or not exercised by a court or a tribunal);
  - (b) where the function's exercise involves enforcement activities in relation to obligations imposed on a Minister;
  - (c) where the function's exercise otherwise constitutes the exercise of oversight or scrutiny of the actions of a Minister.
- (3) Provision made by an order under sections 1 to 5 must be proportionate to the reasons for the order.
- (4) In this section "enforcement activities" means—
  - (a) the bringing of legal proceedings or the provision of assistance with the bringing of legal proceedings,
  - (b) the carrying out of an investigation with a view to bringing legal proceedings or to providing such assistance, or
  - (c) the taking of steps preparatory to any of those things.

## 8 Purpose and conditions

- (1) A Minister may make an order under sections 1 to 5 only if the Minister considers that the order serves the purpose of improving the exercise of public functions, having regard to—
  - (a) efficiency,
  - (b) effectiveness,
  - (c) economy, and
  - (d) securing appropriate accountability to Ministers.
- (2) A Minister may make an order under those sections only if the Minister considers that—
  - (a) the order does not remove any necessary protection, and
  - (b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

## 9 Devolution

- (1) An order under sections 1 to 5 requires the consent of the Scottish Parliament to make provision—
  - (a) which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, or
  - (b) which modifies the functions of the Scottish Ministers.
- (2) Consent is not required under subsection (1)(b) in relation to provision abolishing a function of the Scottish Ministers which relates to a body abolished under section 1 or 2.
- (3) An order under sections 1 to 5 requires the consent of the Northern Ireland Assembly to make provision—
  - (a) which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of the Assembly, or
  - (b) which modifies the functions of a person within subsection (4).
- (4) The persons referred to in subsection (3)(b) are—
  - (a) the First Minister and deputy First Minister of Northern Ireland;
  - (b) a Northern Ireland Minister;
  - (c) the Attorney General for Northern Ireland;
  - (d) a Northern Ireland department;
  - (e) a person exercising public functions in relation to a transferred matter (within the meaning of the Northern Ireland Act 1998).
- (5) Consent is not required under subsection (3)(a) in relation to any provision if—
  - (a) a Bill for an Act of the Northern Ireland Assembly containing the provision would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998, and
  - (b) the provision does not affect, other than incidentally, a transferred matter (within the meaning of that Act).
- (6) An order under sections 1 to 5 requires the consent of the National Assembly for Wales to make provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly.

- (7) An order under sections 1 to 5 requires the consent of the Welsh Ministers to make provision not falling within subsection (6)—
- (a) which modifies the functions of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or
  - (b) which could be made by any of those persons.
- (8) In subsection (7), references to a function do not include—
- (a) a function of giving consent to, or being consulted about, the exercise of a function by a Minister, or
  - (b) a function relating to the constitutional arrangements of a body or office.

## 10 Consultation

- (1) A Minister proposing to make an order under sections 1 to 5 must consult—
- (a) the body or the holder of the office to which the proposal relates,
  - (b) such other persons as appear to the Minister to be representative of interests substantially affected by the proposal,
  - (c) the Scottish Ministers, if the proposal relates to any matter, so far as applying in or as regards Scotland, in relation to which the Scottish Ministers exercise functions (and where the consent of the Scottish Parliament is not required under section 9),
  - (d) a Northern Ireland department, if the proposal relates to any matter, so far as applying in or as regards Northern Ireland, in relation to which the department exercises functions (and where the consent of the Northern Ireland Assembly is not required under section 9),
  - (e) the Welsh Ministers, if the proposal relates to any matter, so far as applying in or as regards Wales, in relation to which the Welsh Ministers exercise functions (and where the consent of the National Assembly for Wales or the Welsh Ministers is not required under section 9),
  - (f) where the functions affected by the proposal relate to the administration of justice, the Lord Chief Justice, and
  - (g) such other persons as the Minister considers appropriate.
- (2) If, as a result of consultation under subsection (1), it appears to the Minister appropriate to change the whole or part of the proposal, the Minister must carry out such further consultation with respect to the changes as seems appropriate.
- (3) It is immaterial for the purposes of this section whether consultation is carried out before or after the commencement of this section.
- (4) Subsection (1)(a) does not apply to a body with no members or an office which is vacant; and, where a body is consulted under that provision, any vacancy in its membership is immaterial.

## 11 Procedure

- (1) If after consultation under section 10 the Minister considers it appropriate to proceed with the making of an order under sections 1 to 5, the Minister may lay before Parliament—
- (a) a draft order, and
  - (b) an explanatory document.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The explanatory document must—
  - (a) introduce and give reasons for the order,
  - (b) explain why the Minister considers that—
    - (i) the order serves the purpose in section 8(1), and
    - (ii) the conditions in section 8(2)(a) and (b) are satisfied,
  - (c) if the order contains provision made by virtue of more than one entry in Schedules 1 to 5, explain why the Minister considers it appropriate for it to do so, and
  - (d) contain a summary of representations received in the consultation.
- (3) The Minister may not act under subsection (1) before the end of the period of twelve weeks beginning with the day on which the consultation began.
- (4) Subject as follows, if after the expiry of the 40-day period the draft order laid under subsection (1) is approved by a resolution of each House of Parliament, the Minister may make an order in the terms of the draft order.
- (5) The procedure in subsections (6) to (9) shall apply to the draft order instead of the procedure in subsection (4) if—
  - (a) either House of Parliament so resolves within the 30-day period, or
  - (b) a committee of either House charged with reporting on the draft order so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.
- (6) 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.
- (7) If after the expiry of the 60-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 order.
- (8) If after the expiry of the 60-day period the Minister wishes to proceed with the draft order but with material changes, the Minister may lay before Parliament—
  - (a) a revised draft order, and
  - (b) a statement giving a summary of the changes proposed.
- (9) If the revised draft order is approved by a resolution of each House of Parliament, the Minister may make an order in the terms of the revised draft order.
- (10) For the purposes of this section an order is made in the terms of a draft order or revised draft order if it contains no material changes to its provisions.
- (11) In this section, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft order are to the periods of 30, 40 and 60 days beginning with the day on which the draft order was laid before Parliament.

- (12) For the purposes of subsection (11) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

## **12 Time limits**

Any entry in Schedules 1 to 5 ceases to have effect at the end of the period of five years beginning with the day on which it came into force (without affecting any order already made by virtue of that entry).