

Legislative and Regulatory Reform Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Cabinet Office, are published separately as HL Bill 109 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Lord Bassam of Brighton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Legislative and Regulatory Reform Bill are compatible with the Convention rights.

Legislative and Regulatory Reform Bill

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Enable provision to be made for the purpose of removing or reducing burdens resulting from legislation, promoting regulatory principles and implementing recommendations of the Law Commission, the Scottish Law Commission and the Northern Ireland Law Commission; to make provision about the exercise of regulatory functions; to make provision about the interpretation of legislation relating to the European Communities and the European Economic Area; to make provision relating to section 2(2) of the European Communities Act 1972; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

ORDER-MAKING POWERS

Powers

1 Power to remove or reduce burdens

- (1) A Minister of the Crown may by order under this section make any provision which he considers would serve the purpose in subsection (2). 5
- (2) That purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.
- (3) In this section “burden” means any of the following – 10
- (a) a financial cost;
 - (b) an administrative inconvenience;
 - (c) an obstacle to efficiency, productivity or profitability; or
 - (d) a sanction, criminal or otherwise, for doing or not doing anything in the course of any activity.

- (4) Provision may not be made under subsection (1) in relation to any burden which affects only a Minister of the Crown or government department, unless it affects the Minister or department in the exercise of a regulatory function.
- (5) For the purposes of subsection (2), a financial cost or administrative inconvenience may result from the form of any legislation (for example, where the legislation is hard to understand). 5
- (6) In this section “legislation” means any of the following or a provision of any of the following –
- (a) a public general Act or local Act (whether passed before or after the commencement of this section), or 10
 - (b) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument made at any time under an Act referred to in paragraph (a),
- but does not include any instrument which is, or is made under, Northern Ireland legislation. 15
- (7) Subject to this Part, the provision that may be made under subsection (1) includes –
- (a) provision conferring functions on any person (including functions of legislating or functions relating to the charging of fees),
 - (b) provision modifying the functions conferred on any person by any enactment, 20
 - (c) provision transferring, or providing for the transfer or delegation of, the functions conferred on any person by any enactment,
 - (d) provision abolishing a body or office established by or under an enactment, 25
- and provision made by amending or repealing any enactment.
- (8) An order under this section may contain such consequential, supplementary, incidental or transitional provision (including provision made by amending or repealing any enactment or other provision) as the Minister making it considers appropriate. 30
- (9) An order under this section may bind the Crown.
- (10) An order under this section must be made in accordance with this Part.

2 Power to promote regulatory principles

- (1) A Minister of the Crown may by order under this section make any provision which he considers would serve the purpose in subsection (2). 35
- (2) That purpose is securing that regulatory functions are exercised so as to comply with the principles in subsection (3).
- (3) Those principles are that –
- (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; 40
 - (b) regulatory activities should be targeted only at cases in which action is needed.
- (4) Subject to this Part, the provision that may be made under subsection (1) for the purpose in subsection (2) includes –

- (a) provision modifying the way in which a regulatory function is exercised by any person,
 - (b) provision amending the constitution of a body exercising regulatory functions which is established by or under an enactment,
 - (c) provision transferring, or providing for the transfer or delegation of, the regulatory functions conferred on any person, 5
 - (d) provision creating a new body to which, or a new office to the holder of which, functions are transferred under paragraph (c),
 - (e) provision abolishing a body or office established by or under an enactment, 10
- and provision made by amending or repealing any enactment.
- (5) An order under this section may contain such consequential, supplementary, incidental or transitional provision (including provision made by amending or repealing any enactment or other provision) as the Minister making it considers appropriate. 15
 - (6) An order under this section may bind the Crown.
 - (7) An order under this section must be made in accordance with this Part.

3 Power to implement Law Commission recommendations

- (1) A Minister of the Crown may by order under this section make any provision which he considers would serve the purpose in subsection (2). 20
- (2) That purpose is the implementation of recommendations of any one or more of the United Kingdom Law Commissions, with or without changes.
- (3) In this Part “the United Kingdom Law Commissions” means –
 - (a) the Law Commission;
 - (b) the Scottish Law Commission; and 25
 - (c) the Northern Ireland Law Commission.
- (4) Subject to this Part, the provision that may be made under subsection (1) includes –
 - (a) provision amending or abolishing any rule of law,
 - (b) provision codifying rules of law, 30
 - (c) provision conferring functions on any person (including functions of legislating or functions relating to the charging of fees),
 - (d) provision modifying the functions conferred on any person by any enactment,
 - (e) provision transferring, or providing for the transfer or delegation of, the functions conferred on any person by any enactment, 35
 - (f) provision abolishing a body or office established by or under an enactment,and provision made by amending or repealing any enactment.
- (5) An order under this section may contain such consequential, supplementary, incidental or transitional provision (including provision made by amending or repealing any enactment or other provision) as the Minister making it considers appropriate. 40
- (6) An order under this section may bind the Crown.

- (7) An order under this section must be made in accordance with this Part.

Restrictions

4 Preconditions

- (1) A Minister may not make provision under section 1(1), 2(1) or 3(1) unless he considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision. 5
- (2) Those conditions are that –
- (a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means;
 - (b) the effect of the provision is proportionate to the policy objective; 10
 - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
 - (d) the provision does not remove any necessary protection;
 - (e) 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. 15
- (3) Subsection (1) does not apply in relation to –
- (a) provision under section 1(1), 2(1) or 3(1) which merely restates an enactment; or
 - (b) provision under section 3(1) which codifies a rule of law. 20
- (4) A Minister may not make –
- (a) provision under section 1(1), 2(1) or 3(1) which merely restates an enactment, or
 - (b) provision under section 3(1) which codifies a rule of law, unless he considers that the condition in subsection (5) is satisfied in relation to that provision. 25
- (5) That condition is that the provision made would make the law more accessible or more easily understood.

5 Subordinate legislation

- (1) An order under this Part may not make provision to confer a function of legislating on a Minister of the Crown (alone or otherwise) unless the conditions in subsections (2) and (3) are satisfied. 30
- (2) The condition in this subsection is that the function is exercisable by statutory instrument.
- (3) The condition in this subsection is that such a statutory instrument – 35
- (a) is subject to annulment in pursuance of a resolution of either House of Parliament; or
 - (b) is not to be made unless a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) Subsection (1) does not apply to provision which merely restates an enactment. 40

6 Taxation

- (1) An order under this Part may not make provision to impose or increase taxation.
- (2) Subsection (1) does not apply to provision which merely restates an enactment.

7 Criminal penalties

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- (1) An order under this Part may not make provision to create a new offence that is punishable, or increase the penalty for an existing offence so that it is punishable –
 - (a) on indictment, with imprisonment for a term exceeding two years; or
 - (b) on summary conviction, with –
 - (i) imprisonment for a term exceeding the normal maximum term; or
 - (ii) a fine exceeding level 5 on the standard scale.

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- (2) In subsection (1)(b)(i), “the normal maximum term” means –

- (a) in relation to England and Wales –

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- (i) in the case of a summary offence, 51 weeks; and
 - (ii) in the case of an offence triable either way, twelve months; and

- (b) in relation to Scotland or Northern Ireland, six months.

- (3) In the case of an offence which, if committed by an adult, is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of –

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- (a) Part 5 of the Criminal Justice Act 1988 (c. 33), or
- (b) section 292(6) and (7) of the Criminal Procedure (Scotland) Act 1995 (c. 46),

the reference in subsection (1)(b)(ii) to a fine exceeding level 5 on the standard scale is to be construed as a reference to the statutory maximum.

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- (4) If an order under this Part making provision creating an offence, or altering the penalty for an offence, is made before the date on which section 281(5) of the Criminal Justice Act 2003 (c. 44) comes into force, the order must provide that, in relation to a summary offence committed before that date, any reference to a term of imprisonment of 51 weeks is to be read as a reference to six months.

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- (5) If an order under this Part making provision creating an offence, or altering the penalty for an offence, is made before the date on which section 154(1) of the Criminal Justice Act 2003 comes into force, the order must provide that, in relation to an offence triable either way committed before that date, any reference to a term of imprisonment of twelve months is to be read as a reference to six months.

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- (6) Subsection (1) does not apply to provision which merely restates an enactment.

8 Forcible entry etc

- (1) An order under this Part may not make provision to –
 - (a) authorise any forcible entry, search or seizure; or
 - (b) compel the giving of evidence.

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- (2) Subsection (1) does not prevent an order under this Part from extending any power for purposes similar to those to which the power applied before the order was made.
- (3) Subsection (1) does not apply to provision which merely restates an enactment.
- 9 Excepted enactments** 5
- An order under this Part may not make provision amending or repealing any provision of—
- (a) this Part; or
 - (b) the Human Rights Act 1998 (c. 42).
- 10 Scotland** 10
- An order under this Part may not, except by virtue of section 1(8), 2(5) or 3(5), make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.
- 11 Northern Ireland**
- An order under this Part may not, except by virtue of section 1(8), 2(5) or 3(5), make provision to amend or repeal any Northern Ireland legislation. 15
- 12 Wales**
- An order under this Part may not make any provision—
- (a) conferring a function on the Assembly,
 - (b) modifying or removing a function of the Assembly, or
 - (c) restating any provision which confers a function on the Assembly, except with the agreement of the Assembly.
- Procedure*
- 13 Procedure: introductory**
- (1) An order under this Part must be made by statutory instrument. 25
 - (2) A Minister may not make an order under this Part unless—
 - (a) he has consulted in accordance with section 14;
 - (b) following that consultation, he has laid a draft order and explanatory document before Parliament in accordance with section 15; and
 - (c) the order is made, as determined under section 16, in accordance with—
 - (i) the negative resolution procedure (see section 17);
 - (ii) the affirmative resolution procedure (see section 18); or
 - (iii) the super-affirmative resolution procedure (see section 19).
- 14 Consultation** 35
- (1) If a Minister proposes to make an order under this Part he must—

- (a) consult such organisations as appear to him to be representative of interests substantially affected by the proposals,
 - (b) where the proposals relate to the functions of one or more statutory bodies, consult those bodies, or persons appearing to him to be representative of those bodies, 5
 - (c) consult the Assembly where the proposals, so far as applying in or as regards Wales, relate to any matter in relation to which the Assembly exercises functions (and where the Assembly’s agreement is not required under section 12),
 - (d) in the case of an order made under section 3, consult the Commission or Commissions whose recommendation or recommendations he is proposing to implement, and 10
 - (e) consult such other persons as he considers appropriate.
- But this subsection does not apply to the extent that subsection (2) applies.
- (2) To the extent that a Minister proposes to make an order under section 3 for the purpose of implementing a recommendation of any one or more of the United Kingdom Law Commissions without material changes, the Minister must carry out such consultation as he considers appropriate having regard to the consultation carried out by that Commission or those Commissions. 15
 - (3) If, as a result of any consultation required by subsection (1) or (2), it appears to the Minister that it is appropriate to change the whole or any part of his proposals, he must undertake such further consultation with respect to the changes as he considers appropriate. 20
 - (4) If, before the day on which this section comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this section, those requirements shall to that extent be taken to have been satisfied. 25
 - (5) Where –
 - (a) proposals for an order under this Part are the same as proposals for an order under section 1 of the Regulatory Reform Act 2001 (c. 6), 30
 - (b) consultation has at any time been undertaken in relation to the proposals under section 5 of that Act, and
 - (c) that consultation satisfied the requirements of that section in relation to the proposals,the requirements of this section shall be taken to have been satisfied in relation to the proposals. 35
 - (6) In subsection (1)(b) “statutory body” means –
 - (a) a body established by or under any enactment; or
 - (b) the holder of any office so established.
- 15 Draft order and explanatory document laid before Parliament 40**
- (1) If, after the conclusion of the consultation required by section 14, the Minister considers it appropriate to proceed with the making of an order under this Part, he must lay before Parliament –
 - (a) a draft of the order, together with
 - (b) an explanatory document. 45
 - (2) The explanatory document must –

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- (a) explain under which power or powers in this Part the provision contained in the order is made;
 - (b) introduce and give reasons for the provision;
 - (c) explain why the Minister considers that –
 - (i) the conditions in section 4(2) are satisfied (where relevant); or 5
 - (ii) the condition in section 4(5) is satisfied;
 - (d) in the case of an order under section 1, include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens (within the meaning of subsection (2) of that section); 10
 - (e) identify and give reasons for –
 - (i) any powers to legislate conferred by the order; and
 - (ii) the procedural requirements attaching to those powers; and
 - (f) give details of –
 - (i) any consultation undertaken under section 14; 15
 - (ii) any representations received as a result of the consultation;
 - (iii) the changes (if any) made as a result of those representations.
- (3) In the case of an order under section 3, the explanatory document must under subsection (2)(b) –
- (a) identify the recommendations being implemented; 20
 - (b) identify the manner in which the order is intended to implement each of the recommendations; and
 - (c) give details of, and reasons for, any differences between the recommendations and the Minister’s proposals.
- (4) Where a person making representations in response to consultation under section 14 has requested the Minister not to disclose them, the Minister must not disclose them under subsection (2)(f)(ii) if or to the extent that to do so would (disregarding any connection with proceedings in Parliament) constitute a breach of confidence actionable by any person. 25
- (5) If information in representations made by a person in response to consultation under section 14 relates to another person, the Minister need not disclose the information under subsection (2)(f)(ii) if or to the extent that – 30
- (a) it appears to the Minister that the disclosure of that information could adversely affect the interests of that other person; and
 - (b) the Minister has been unable to obtain the consent of that other person 35 to the disclosure.
- (6) Subsections (4) and (5) do not affect any disclosure that is requested by, and made to, a committee of either House of Parliament charged with reporting on the draft order.
- 16 Determination of Parliamentary procedure 40**
- (1) The explanatory document laid with a draft order under section 15 must contain a recommendation by the Minister as to which of the following should apply in relation to the making of an order pursuant to the draft order –
- (a) the negative resolution procedure (see section 17);
 - (b) the affirmative resolution procedure (see section 18); or 45
 - (c) the super-affirmative resolution procedure (see section 19).

- (2) The explanatory document must give reasons for the Minister’s recommendation.
- (3) Where the Minister’s recommendation is that the negative resolution procedure should apply, that procedure shall apply unless, within the 30-day period –
 - (a) either House of Parliament requires that the super-affirmative resolution procedure shall apply, in which case that procedure shall apply; or
 - (b) in a case not falling within paragraph (a), either House of Parliament requires that the affirmative resolution procedure shall apply, in which case that procedure shall apply.
- (4) Where the Minister’s recommendation is that the affirmative resolution procedure should apply, that procedure shall apply unless, within the 30-day period, either House of Parliament requires that the super-affirmative resolution procedure shall apply, in which case the super-affirmative resolution procedure shall apply.
- (5) Where the Minister’s recommendation is that the super-affirmative resolution procedure should apply, that procedure shall apply.
- (6) For the purposes of this section a House of Parliament shall be taken to have required a procedure within the 30-day period if –
 - (a) that House resolves within that period that that procedure shall apply; or
 - (b) in a case not falling within paragraph (a), a committee of that House charged with reporting on the draft order has recommended within that period that that procedure should apply and the House has not by resolution rejected that recommendation within that period.
- (7) In this section the “30-day period” means the period of 30 days beginning with the day on which the draft order was laid before Parliament under section 15.

17 Negative resolution procedure

- (1) For the purposes of this Part, the “negative resolution procedure” in relation to the making of an order pursuant to a draft order laid under section 15 is as follows.
- (2) The Minister may make an order in the terms of the draft order subject to the following provisions of this section.
- (3) The Minister may not make an order in the terms of the draft order if either House of Parliament so resolves within the 40-day period.
- (4) A committee of either House charged with reporting on the draft order may, at any time after the expiry of the 30-day period and before the expiry of the 40-day period, recommend under this subsection that no further proceedings be taken in relation to the draft order.
- (5) A recommendation may be made under subsection (4) only if the committee considers that –
 - (a) the provision made by the draft order does not serve the purpose specified in section 1(2), 2(2) or 3(2) (as the case may be);
 - (b) any relevant condition in section 4(2) is not satisfied in relation to any provision of the draft order referred to in section 4(1); or

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- (c) the condition in section 4(5) is not satisfied in relation to any provision of the draft order referred to in section 4(4).
- (6) Where a recommendation is made by a committee of either House under subsection (4) in relation to a draft order, the Minister may not make an order in the terms of the draft order unless the recommendation is, in the same Session, rejected by resolution of that House. 5
- (7) For the purposes of this section an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (8) In this section –
- (a) the “30-day period” has the meaning given by section 16(7); and 10
 - (b) the “40-day period” means the period of 40 days beginning with the day on which the draft order was laid before Parliament under section 15.
- (9) For the purpose of calculating the 40-day period in a case where a recommendation is made under subsection (4) by a committee of either House but the recommendation is rejected by that House under subsection (6), no account shall be taken of any day between the day on which the recommendation was made and the day on which the recommendation was rejected. 15
- 18 Affirmative resolution procedure** 20
- (1) For the purposes of this Part the “affirmative resolution procedure” in relation to the making of an order pursuant to a draft order laid under section 15 is as follows.
- (2) If after the expiry of the 40-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. 25
- (3) However, a committee of either House charged with reporting on the draft order may, at any time after the expiry of the 30-day period and before the expiry of the 40-day period, recommend under this subsection that no further proceedings be taken in relation to the draft order. 30
- (4) A recommendation under subsection (3) may be made only if the committee considers that –
- (a) the provision made by the draft order does not serve the purpose specified in section 1(2), 2(2) or 3(2) (as the case may be);
 - (b) any relevant condition in section 4(2) is not satisfied in relation to any provision of the draft order referred to in section 4(1); or 35
 - (c) the condition in section 4(5) is not satisfied in relation to any provision of the draft order referred to in section 4(4).
- (5) Where a recommendation is made by a committee of either House under subsection (3) in relation to a draft order, no proceedings may be taken in relation to the draft order in that House under subsection (2) unless the recommendation is, in the same Session, rejected by resolution of that House. 40
- (6) For the purposes of subsection (2) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (7) In this section – 45

- (a) the “30-day period” has the meaning given by section 16(7); and
 - (b) the “40-day period” has the meaning given by section 17(8).
- (8) For the purpose of calculating the 40-day period in a case where a recommendation is made under subsection (3) by a committee of either House but the recommendation is rejected by that House under subsection (5), no account shall be taken of any day between the day on which the recommendation was made and the day on which the recommendation was rejected. 5

19 Super-affirmative resolution procedure

- (1) For the purposes of this Part the “super-affirmative resolution procedure” in relation to the making of an order pursuant to a draft order laid under section 15 is as follows. 10
- (2) The Minister must have regard to –
- (a) any representations,
 - (b) any resolution of either House of Parliament, and 15
 - (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.
- (3) If, after the expiry of the 60-day period, the Minister wishes to make an order in the terms of the draft, he must lay before Parliament a statement – 20
- (a) stating whether any representations were made under subsection (2)(a); and
 - (b) if any representations were so made, giving details of them.
- (4) The Minister may after the laying of such a statement make an order in the terms of the draft if it is approved by a resolution of each House of Parliament. 25
- (5) However, a committee of either House charged with reporting on the draft order may, at any time after the laying of a statement under subsection (3) and before the draft order is approved by that House under subsection (4), recommend under this subsection that no further proceedings be taken in relation to the draft order. 30
- (6) A recommendation under subsection (5) may be made only if the committee considers that –
- (a) the provision made by the draft order does not serve the purpose specified in section 1(2), 2(2) or 3(2) (as the case may be);
 - (b) any relevant condition in section 4(2) is not satisfied in relation to any provision of the draft order referred to in section 4(1); or 35
 - (c) the condition in section 4(5) is not satisfied in relation to any provision of the draft order referred to in section 4(4).
- (7) Where a recommendation is made by a committee of either House under subsection (5) in relation to a draft order, no proceedings may be taken in relation to the draft order in that House under subsection (4) unless the recommendation is, in the same Session, rejected by resolution of that House. 40
- (8) If, after the expiry of the 60-day period, the Minister wishes to make an order consisting of a version of the draft order with material changes, he must lay before Parliament – 45
- (a) a revised draft order; and

- (b) a statement giving details of—
- (i) any representations made under subsection (2)(a); and
 - (ii) the revisions proposed.
- (9) The Minister may after laying a revised draft order and statement under subsection (8) make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament. 5
- (10) However, a committee of either House charged with reporting on the revised draft order may, at any time after the revised draft order is laid under subsection (8) and before it is approved by that House under subsection (9), recommend under this subsection that no further proceedings be taken in relation to the revised draft order. 10
- (11) A recommendation under subsection (10) may be made only if the committee considers that—
- (a) the provision made by the revised draft order does not serve the purpose specified in section 1(2), 2(2) or 3(2) (as the case may be); 15
 - (b) any relevant condition in section 4(2) is not satisfied in relation to any provision of the revised draft order referred to in section 4(1); or
 - (c) the condition in section 4(5) is not satisfied in relation to any provision of the revised draft order referred to in section 4(4).
- (12) Where a recommendation is made by a committee of either House under subsection (10) in relation to a revised draft order, no proceedings may be taken in relation to the revised draft order in that House under subsection (9) unless the recommendation is, in the same Session, rejected by resolution of that House. 20
- (13) For the purposes of subsections (4) and (9) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order. 25
- (14) In this section the “60-day period” means the period of 60 days beginning with the day on which the draft order was laid before Parliament under section 15.
- General* 30

20 Calculation of time periods

In calculating any period of days for the purposes of sections 16 to 19, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

21 Combination with powers under European Communities Act 1972 35

- (1) The power to make an order under this Part may be exercised together with, and by the same instrument as, the power to make an order under section 2(2) of the European Communities Act 1972 (c. 68).
- (2) Where the powers referred to in subsection (1) are so exercised—
 - (a) sections 13(2) to 19 above apply to the order under section 2(2) of the European Communities Act 1972 as to the order under this Part; and 40
 - (b) paragraph 2(2) of Schedule 2 to the European Communities Act 1972 does not apply.

22 Interpretation of Part 1

In this Part—

to “legislate” means to legislate by order, rules, regulations or other subordinate instrument;

“restate” means replace with alterations only of form or arrangement (and for these purposes to remove an ambiguity is to make an alteration other than one of form or arrangement);

“the United Kingdom Law Commissions” has the meaning given by section 3(3).

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PART 2

10

REGULATORS

Exercise of regulatory functions

23 Principles

(1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.

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(2) Those principles are that—

(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

(b) regulatory activities should be targeted only at cases in which action is needed.

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(3) The duty in subsection (1) is subject to any other requirement affecting the exercise of the regulatory function.

24 Code of practice

(1) A Minister of the Crown may issue and from time to time revise a code of practice in relation to the exercise of regulatory functions.

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(2) Any person exercising a regulatory function to which this section applies must, except in a case where subsection (3) applies, have regard to the code in determining any general policy or principles by reference to which the person exercises the function.

(3) Any person exercising a regulatory function to which this section applies which is a function of setting standards or giving guidance generally in relation to the exercise of other regulatory functions must have regard to the code in the exercise of the function.

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(4) The duties in subsections (2) and (3) are subject to any other requirement affecting the exercise of the regulatory function.

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25 Code of practice: procedure

(1) Where a Minister of the Crown proposes to issue or revise a code of practice under section 24, he shall prepare a draft of the code (or revised code).

(2) The Minister shall, in preparing the draft, seek to secure that it is consistent with the principles specified in section 23(2).

40

- (3) The Minister shall consult the following about the draft –
- (a) persons appearing to him to be representative of persons exercising regulatory functions;
 - (b) such other persons as he considers appropriate.
- (4) If the Minister determines to proceed with the draft (either in its original form or with modifications) he shall lay the draft before Parliament. 5
- (5) Where the draft laid before Parliament under subsection (4) is approved by resolution of each House of Parliament, the Minister may issue the code (or revised code).
- (6) A code (or revised code) issued under subsection (5) shall come into force on such date as the Minister may by order made by statutory instrument appoint. 10

Supplementary

26 Functions to which sections 23 and 24 apply

- (1) Sections 23 and 24 apply to regulatory functions specified under this section.
- (2) A Minister of the Crown may by order in accordance with this section specify regulatory functions as functions to which sections 23 and 24 apply. 15
- (3) A Minister may not under subsection (2) specify –
- (a) a regulatory function so far as exercisable in Scotland, if or to the extent that the function relates to matters which are not reserved matters;
 - (b) a regulatory function so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters which are transferred matters; or
 - (c) a regulatory function exercisable only in or as regards Wales. 20
- (4) The Assembly may by order in accordance with this section specify regulatory functions exercisable only in or as regards Wales as functions to which sections 23 and 24 apply. 25
- (5) An order under this section may not specify regulatory functions conferred on or exercisable by any of the following –
- (a) the Gas and Electricity Markets Authority;
 - (b) the Office of Communications;
 - (c) the Office of Rail Regulation;
 - (d) the Postal Services Commission;
 - (e) the Water Services Regulation Authority. 30
- (6) Before making an order under this section, the authority making the order must consult the following –
- (a) any person (other than the authority) whose functions are to be specified in the order;
 - (b) such other persons as the authority considers appropriate. 35
- (7) An order under this section may make such consequential, supplementary, incidental, or transitional provision (including provision amending any enactment) as the authority making it considers appropriate; and may make different provision for different purposes. 40
- (8) An order under this section must be made by statutory instrument.

- (9) A Minister of the Crown may not make a statutory instrument containing an order under this section unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (10) In this section –
- “reserved matter” and “Scotland” have the same meanings as in the Scotland Act 1998 (c. 46); 5
 - “transferred matter” and “Northern Ireland” have the same meanings as in the Northern Ireland Act 1998 (c. 47);
 - “Wales” has the same meaning as in the Government of Wales Act 1998 (c. 38). 10

PART 3

LEGISLATION RELATING TO THE EUROPEAN COMMUNITIES ETC

Interpretation of legislation

27 References to Community instruments

- (1) In the Interpretation Act 1978 (c. 30), after section 20 insert – 15
- “20A References to Community instruments**
- Where an Act passed after the commencement of this section refers to a Community instrument that has been amended, extended or applied by another such instrument, the reference, unless the contrary intention appears, is a reference to that instrument as so amended, extended or applied.” 20
- (2) In that Act, in section 22(1) (application to Acts and Measures), after “passed after the commencement of this Act” insert “(subject, in the case of section 20A, to the provision made in that section)”.
- (3) In that Act, in section 24 (application to Northern Ireland), after subsection (3) insert – 25
- “(3A) Section 20A applies to Northern Ireland legislation as it applies to Acts.”
- (4) In the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379), in Schedule 1 (statutory interpretation and operation) at the end insert – 30

“References to Community instruments

- 16 Where an Act of the Scottish Parliament passed after the commencement of this paragraph refers to a Community instrument that has been amended, extended or applied by another such instrument, the reference, unless the contrary intention appears, is a reference to that instrument as so amended, extended or applied.” 35

28 EEA agreement and EEA state

- (1) In the Interpretation Act 1978, in Schedule 1 (defined expressions), after the

definition of “Crown Estate Commissioners” insert –

““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time. [The date of the coming into force of this paragraph.]” 5

“EEA state”, in relation to any time, means –

- (a) a state which at that time is a member State; or
- (b) any other state which at that time is a party to the EEA agreement. [The date of the coming into force of this paragraph.]” 10

- (2) In that Act, in section 24 (application to Northern Ireland), in subsection (4), after “The Corporation Tax Acts” insert –

“EEA agreement and EEA state;”.

- (3) In the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379), in Schedule 2 (general definitions), after the definition of “Devolution issue” insert – 15

““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as from time to time modified or supplemented by or under the Community Treaties. 20

“EEA state”, in relation to any time, means –

- (a) a state which at that time is a member State; or 25
- (b) any other state which at that time is a party to the EEA agreement.”

- (4) The amendment made by subsection (3) does not have effect in relation to –

- (a) an Act of the Scottish Parliament passed before the commencement of this section; or 30
- (b) Scottish subordinate legislation (within the meaning of the Order referred to in subsection (3)) made before the commencement of this section.

Implementation of Community obligations etc

29 Power to make orders, rules and schemes 35

- (1) In section 2 of the European Communities Act 1972 (c. 68) (general implementation of Treaties) –

- (a) in subsection (2), for “by regulations” substitute “by order, rules, regulations or scheme”;
- (b) in subsection (4), for “and regulations” substitute “or orders, rules, regulations or schemes”. 40

- (2) In Schedule 2 to that Act (provisions as to subordinate legislation) –

- (a) in paragraph 2, in sub-paragraphs (1) and (2), for “regulations” substitute “any order, rules, regulations or scheme”;

- (b) in paragraph 3, for “regulations”, wherever occurring, substitute “order, rules, regulations or scheme”.
- (3) In section 29 of the Government of Wales Act 1998 (c. 38) (implementation of Community law) in subsections (2) and (3), for “regulations”, wherever occurring, substitute “any order, rules, regulations or scheme”. 5
- (4) In Schedule 8 to the Scotland Act 1998 (c. 46), in paragraph 15(3), for “regulations” substitute “any order, rules, regulations or scheme”.
- (5) Where any enactment passed, or subordinate legislation made, before the coming into force of this section refers to regulations under subsection (2) of section 2 of the European Communities Act 1972 (c. 68), a Minister of the Crown may by order or regulations amend the enactment or subordinate legislation so that it includes a reference to any order, rules or scheme under that subsection. 10
- (6) The powers of a Minister of the Crown under subsection (5) –
- (a) so far as exercisable in relation to a matter the exercise of functions in respect of which is within devolved competence (within the meaning of the Scotland Act 1998), shall also be exercisable by the Scottish Ministers; 15
- (b) so far as exercisable in relation to a transferred matter (within the meaning of the Northern Ireland Act 1998 (c. 47)), shall also be exercisable by a Northern Ireland department; 20
- (c) so far as exercisable in relation to a matter in respect of which functions are exercisable by the Assembly, shall also be exercisable by the Assembly.
- (7) The power under subsection (5) to make an order or regulations – 25
- (a) so far as exercisable by a Minister of the Crown, the Scottish Ministers or the National Assembly for Wales, shall be exercisable by statutory instrument;
- (b) so far as exercisable by a Northern Ireland department, shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)). 30
- (8) A statutory instrument or statutory rule containing an order or regulations under subsection (5) –
- (a) if made by a Minister of the Crown, shall be subject to annulment in pursuance of a resolution of either House of Parliament; 35
- (b) if made by the Scottish Ministers, shall be subject to annulment in pursuance of a resolution of the Scottish Parliament; and
- (c) if made by a Northern Ireland department, shall be subject to negative resolution, within the meaning of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.)), as if it were a statutory instrument within the meaning of that Act. 40
- (9) In subsection (5) –
- (a) “enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation;
- (b) “subordinate legislation” means any Order in Council, order, rules, regulations, scheme, warrant, byelaws or other instrument made under any Act, Act of the Scottish Parliament or Northern Ireland legislation. 45

30 Power to make ambulatory references to Community instruments

In the European Communities Act 1972 (c. 68), in Schedule 2 (provisions as to subordinate legislation), after paragraph 1 insert –

- “1A (1) Where –
- (a) subordinate legislation makes provision for a purpose mentioned in section 2(2) of this Act, 5
 - (b) the legislation contains a reference to a Community instrument or any provision of a Community instrument, and
 - (c) it appears to the person making the legislation that it is necessary or expedient for the reference to be construed as a reference to that instrument or that provision as amended from time to time, 10
- the subordinate legislation may make express provision to that effect. 15
- (2) In this paragraph “subordinate legislation” means any Order in Council, order, rules, regulations, scheme, warrant, byelaws or other instrument made after the coming into force of this paragraph under any Act, Act of the Scottish Parliament or Northern Ireland legislation passed or made before or after the coming into force of this paragraph.” 20

31 Combination of powers

In Schedule 2 to the European Communities Act 1972, after paragraph 2 insert –

- “2A (1) This paragraph applies where, pursuant to paragraph 2(2) above, a draft of a statutory instrument containing provision made in exercise of the power conferred by section 2(2) of this Act is laid before Parliament for approval by resolution of each House of Parliament and – 25
- (a) the instrument also contains provision made in exercise of a power conferred by any other enactment; and 30
 - (b) apart from this paragraph, any of the conditions in sub-paragraph (2) below applies in relation to the instrument so far as containing that provision.
- (2) The conditions referred to in sub-paragraph (1)(b) above are that – 35
- (a) the instrument, so far as containing the provision referred to in sub-paragraph (1)(a) above, is by virtue of any enactment subject to annulment in pursuance of a resolution of either House of Parliament;
 - (b) the instrument so far as containing that provision is by virtue of any enactment required to be laid before Parliament after being made and to be approved by resolution of each House of Parliament in order to come into or remain in force; 40
 - (c) in a case not falling within paragraph (a) or (b) above, the instrument so far as containing that provision is by virtue of any enactment required to be laid before Parliament after being made; 45

- (d) the instrument or a draft of the instrument so far as containing that provision is not by virtue of any enactment required at any time to be laid before Parliament.
- (3) Where this paragraph applies in relation to the draft of a statutory instrument – 5
 - (a) the instrument, so far as containing the provision referred to in sub-paragraph (1)(a) above, may not be made unless the draft is approved by a resolution of each House of Parliament;
 - (b) in a case where the condition in sub-paragraph (2)(a) above is satisfied, the instrument so far as containing that provision is not subject to annulment in pursuance of a resolution of either House of Parliament; 10
 - (c) in a case where the condition in sub-paragraph (2)(b) above is satisfied, the instrument is not required to be laid before Parliament after being made (and accordingly any requirement that the instrument be approved by each House of Parliament in order for it to come into or remain in force does not apply); and 15
 - (d) in a case where the condition in sub-paragraph (2)(c) above is satisfied, the instrument so far as containing that provision is not required to be laid before Parliament after being made. 20
- (4) In this paragraph, references to an enactment are to an enactment passed or made before or after the coming into force of this paragraph. 25
- 2B (1) This paragraph applies where, pursuant to paragraph 2(2) above, a statutory instrument containing provision made in exercise of the power conferred by section 2(2) of this Act is laid before Parliament under section 5 of the Statutory Instruments Act 1946 (instruments subject to annulment) and – 30
 - (a) the instrument also contains provision made in exercise of a power conferred by any other enactment; and
 - (b) apart from this paragraph, either of the conditions in sub-paragraph (2) below applies in relation to the instrument so far as containing that provision. 35
- (2) The conditions referred to in sub-paragraph (1)(b) above are that –
 - (a) the instrument so far as containing the provision referred to in sub-paragraph (1)(a) above is by virtue of any enactment required to be laid before Parliament after being made but – 40
 - (i) is not subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (ii) is not by virtue of any enactment required to be approved by resolution of each House of Parliament in order to come into or remain in force;
 - (b) the instrument or a draft of the instrument so far as containing that provision is not by virtue of any enactment required at any time to be laid before Parliament. 45
- (3) Where this paragraph applies in relation to a statutory instrument, the instrument, so far as containing the provision referred to in sub-

paragraph (1)(a) above, is subject to annulment in pursuance of a resolution of either House of Parliament.

- (4) In this paragraph, references to an enactment are to an enactment passed or made before or after the coming into force of this paragraph. 5

- 2C Paragraphs 2A and 2B above apply to a Scottish statutory instrument containing provision made in the exercise of the power conferred by section 2(2) of this Act (and a draft of any such instrument) as they apply to any other statutory instrument containing such provision (or, as the case may be, any draft of such an instrument), but subject to the following modifications— 10
- (a) references to Parliament and to each or either House of Parliament are to be read as references to the Scottish Parliament;
- (b) references to an enactment include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; and 15
- (c) the reference in paragraph 2B(1) to section 5 of the Statutory Instruments Act 1946 is to be read as a reference to article 11 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096).” 20

PART 4

SUPPLEMENTARY AND GENERAL

Supplementary 25

32 Repeals and savings

- (1) The enactments mentioned in the Schedule to this Act are repealed to the extent specified in the second column of that Schedule.
- (2) Where a document has been laid before Parliament under section 6(1) of the 2001 Act before the day on which this Act comes into force, the repeal by this Act of sections 1 to 8 of the 2001 Act does not affect the application of those sections in relation to the making of an implementing order. 30
- (3) In subsection (2) an “implementing order” in relation to any document laid before Parliament under section 6(1) of the 2001 Act means an order to give effect (with or without variations) to proposals in that document. 35
- (4) Nothing in this Act affects the continuation in force of any order under section 1 of the 2001 Act which—
- (a) was made before the day on which this Act comes into force; or
- (b) is made on or after that day by virtue of subsection (2).
- (5) Nothing in this Act affects the continuation in force of any order under section 1 of the Deregulation and Contracting Out Act 1994 (c. 40) which, immediately before the coming into force of this Act, continues in force by virtue of section 12(4) of the 2001 Act. 40
- (6) In this section “the 2001 Act” means the Regulatory Reform Act 2001 (c. 6).

33 Consequential amendments

- (1) In section 6 of the Deregulation and Contracting Out Act 1994 (c. 40) (model provisions with respect to appeals), in subsection (7), for the definition of “enforcement action” substitute –
- ““enforcement action” means –
- (a) in relation to any restriction, requirement or condition, any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it; and
- (b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence;”.
- (2) In section 100 of the Local Government Act 2003 (c. 26) (exercise of powers by reference to authorities’ performance categories), in subsection (2)(d), for “section 1 of the Regulatory Reform Act 2001 (c. 6)” substitute “section 1 or 2 of the Legislative and Regulatory Reform Act 2006”.

General

34 General interpretation

- (1) In this Act –
- “the Assembly” means the National Assembly for Wales;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
- “regulatory function” means –
- (a) a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity,
- (b) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity,
- but does not include any function of conducting criminal or civil proceedings.
- (2) In subsection (1), in the definition of “regulatory function” –
- (a) the references to a function include a function exercisable by or on behalf of the Crown;
- (b) the references to an activity include –
- (i) providing any goods or services;
- (ii) employing or offering employment to any person.

35 Commencement

This Act comes into force at the end of the period of two months beginning with the day on which it is passed.

36 Extent

- (1) 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 that enactment.
- (2) Section 33 extends to England and Wales only. 5
- (3) The repeals in the Schedule have the same extent as the enactments to which they relate.

37 Short title

This Act may be cited as the Legislative and Regulatory Reform Act 2006.

SCHEDULE

Section 32

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Regulatory Reform Act 2001 (c. 6)	The whole Act except section 13(1)(b) and (2), the definition of “the 1994 Act” in section 14 and section 15(1) and (2).	5
Justice (Northern Ireland) Act 2002 (c. 26)	In Schedule 12, paragraph 81.	
Education Act 2002 (c. 32)	Section 2(9).	
Human Fertilisation and Embryology (Deceased Fathers) Act 2003 (c. 24)	Section 2(2) and (3).	10
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	Section 189(4).	15
Criminal Justice Act 2003 (c. 44)	In Schedule 27, paragraph 8.	
Gender Recognition Act 2004 (c. 7)	In section 24 – (a) in subsections (1) and (2), the words “, the Chancellor of the Exchequer”; (b) in subsection (3), the words “or paragraph 11 of Schedule 3”.	20
Statute Law (Repeals) Act 2004 (c. 14)	In Schedule 3, paragraph 11. Section 1(3).	
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 20(6).	25
Civil Partnership Act 2004 (c. 33)	In section 35(1)(a), the words “(whether or not under an order under section 1 of the Regulatory Reform Act 2001 (c. 6))”.	30
Railways Act 2005 (c. 14)	In Schedule 3, paragraph 14.	

Legislative and Regulatory Reform Bill

A

B I L L

To enable provision to be made for the purpose of removing or reducing burdens resulting from legislation, promoting regulatory principles and implementing recommendations of the Law Commission, the Scottish Law Commission and the Northern Ireland Law Commission; to make provision about the exercise of regulatory functions; to make provision about the interpretation of legislation relating to the European Communities and the European Economic Area; to make provision relating to section 2(2) of the European Communities Act 1972; and for connected purposes.

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