

# Legislative and Regulatory Reform Bill

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[AS AMENDED ON REPORT]

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# B I L L

[AS AMENDED ON REPORT]

TO

Enable provision to be made for the purpose of removing or reducing burdens resulting from legislation and promoting regulatory principles; 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.

**B**E 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, which affects the carrying on of any lawful 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 abolishing, conferring or transferring, or providing for the delegation of, functions of any description,
  - (b) provision creating or abolishing a body or office, 20
- 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. 25
- (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). 30
- (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; 35
  - (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, 40
  - (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 delegation of, the regulatory functions conferred on any person, 45

and provision made by amending or repealing any enactment.

- (5) The provision referred to in subsection (4)(c) includes provision –
- (a) to create a new body to which, or a new office to the holder of which, regulatory functions are transferred;
  - (b) to abolish a body from which, or office from the holder of which, regulatory functions are transferred. 5
- (6) The provision that may be made under subsection (1) does not include provision conferring any new regulatory function or abolishing any regulatory function.
- (7) 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. 10
- (8) An order under this section may bind the Crown.
- (9) An order under this section must be made in accordance with this Part. 15

#### *Restrictions*

### **3 Preconditions**

- (1) A Minister may not make provision under section 1(1) or 2(1), other than provision which merely restates an enactment, unless he considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision. 20
- (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; 25
  - (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; 30
  - (f) the provision is not of constitutional significance.
- (3) A Minister may not make provision under section 1(1) or 2(1) which merely restates an enactment unless he considers that the condition in subsection (4) is satisfied in relation to that provision. 35
- (4) That condition is that the provision made would make the law more accessible or more easily understood.
- (5) In this section and sections 4 to 7, to “restate” an enactment means to replace it 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). 40

**4 Subordinate legislation**

- (1) An order under this Part may only confer or transfer a function of legislating on or to –
- (a) a Minister of the Crown;
  - (b) any person on or to whom functions are conferred or have been transferred by an enactment; or
  - (c) a body which, or the holder of an office which, is created by the order.
- (2) An order under this Part may not make provision for the delegation of any function of legislating.
- (3) 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 (4) and (5) are satisfied.
- (4) The condition in this subsection is that the function is exercisable by statutory instrument.
- (5) The condition in this subsection is that such a statutory instrument –
- (a) is an instrument to which section 5(1) of the Statutory Instruments Act 1946 (c. 36) applies (instruments subject to annulment by 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.
- (6) Subsections (1) to (3) do not apply to provision which merely restates an enactment.
- (7) For the purposes of this section a “function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.

**5 Taxation**

- (1) An order under this Part may not make provision to impose, abolish or vary any tax.
- (2) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect in relation to –
- (a) any property, rights or liabilities transferred by or under an order under this Part; or
  - (b) anything done for the purposes of, or in relation to, the transfer of any property, rights or liabilities by or under an order under this Part.
- (3) The provision which may be made under subsection (2)(a) includes in particular provision for –
- (a) a tax provision not to apply, or to apply with modifications, in relation to any property, rights or liabilities transferred;
  - (b) any property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Minister of the Crown making the order to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to any property, rights or liabilities transferred.

- (4) The provision which may be made under subsection (2)(b) includes in particular provision for –
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
  - (b) anything done for the purposes of or in relation to the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Minister of the Crown making the order to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of or in relation to the transfer.
- (5) Regulations under subsection (2) are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In this section –
- “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty or stamp duty reserve tax;
  - “tax provision” means a provision of an enactment about a relevant tax.

## 6 Criminal penalties

- (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.
- (2) In subsection (1)(b)(i), “the normal maximum term” means –
- (a) in relation to England and Wales –
    - (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 –
- (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.
- (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 (c. 44) 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. 5
- (6) Subsection (1) does not apply to provision which merely restates an enactment.
- 7 Forcible entry etc**
- (1) An order under this Part may not make provision to – 10
- (a) authorise any forcible entry, search or seizure; or
  - (b) compel the giving of evidence.
- (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. 15
- 8 Excepted enactments**
- 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). 20
- 9 Scotland**
- An order under this Part may not, except by virtue of section 1(8) or 2(7), make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.
- 10 Northern Ireland** 25
- An order under this Part may not, except by virtue of section 1(8) or 2(7), make provision to amend or repeal any Northern Ireland legislation.
- 11 Wales**
- An order under this Part may not make any provision – 30
- (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*
- 12 Procedure: introductory** 35
- (1) An order under this Part must be made by statutory instrument.
- (2) A Minister may not make an order under this Part unless –



- (a) he has consulted in accordance with section 13;
- (b) following that consultation, he has laid a draft order and explanatory document before Parliament in accordance with section 14; and
- (c) the order is made, as determined under section 15, in accordance with—
  - (i) the negative resolution procedure (see section 16);
  - (ii) the affirmative resolution procedure (see section 17); or
  - (iii) the super-affirmative resolution procedure (see section 18).

### 13 Consultation

- (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;
  - (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 11);
  - (d) in such cases as he considers appropriate, consult the Law Commission, the Scottish Law Commission or the Northern Ireland Law Commission; and
  - (e) consult such other persons as he considers appropriate.
- (2) If, as a result of any consultation required by subsection (1), 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.
- (3) 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.
- (4) 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),
  - (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.
- (5) 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.

**14 Draft order and explanatory document laid before Parliament**

- (1) If, after the conclusion of the consultation required by section 13, 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 5
  - (b) an explanatory document.
- (2) The explanatory document must –
- (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; 10
  - (c) explain why the Minister considers that –
    - (i) the conditions in section 3(2) are satisfied (where relevant); or
    - (ii) the condition in section 3(4) 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); 15
  - (e) identify and give reasons for –
    - (i) any functions of legislating conferred by the order; and
    - (ii) the procedural requirements attaching to the exercise of those functions; and 20
  - (f) give details of –
    - (i) any consultation undertaken under section 13;
    - (ii) any representations received as a result of the consultation;
    - (iii) the changes (if any) made as a result of those representations. 25
- (3) Where a person making representations in response to consultation under section 13 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. 30
- (4) If information in representations made by a person in response to consultation under section 13 relates to another person, the Minister need not disclose the information under subsection (2)(f)(ii) if or to the extent that –
- (a) it appears to the Minister that the disclosure of that information could adversely affect the interests of that other person; and 35
  - (b) the Minister has been unable to obtain the consent of that other person to the disclosure.
- (5) Subsections (3) and (4) 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. 40
- (6) In subsection (2)(e) “function of legislating” has the same meaning as in section 4.

**15 Determination of Parliamentary procedure**

- (1) The explanatory document laid with a draft order under section 14 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 – 45

- (a) the negative resolution procedure (see section 16);
  - (b) the affirmative resolution procedure (see section 17); or
  - (c) the super-affirmative resolution procedure (see section 18).
- (2) The explanatory document must give reasons for the Minister’s recommendation. 5
- (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 10
  - (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. 15
- (5) Where the Minister’s recommendation is that the super-affirmative resolution procedure should apply, that procedure shall apply. 20
- (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 25
  - (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 14. 30

## 16 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 14 is as follows. 35
- (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 the Minister not make an order in the terms of the draft order. 40
- (5) 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 45

in the terms of the draft order unless the recommendation is, in the same Session, rejected by resolution of that House.

- (6) 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.
- (7) In this section – 5
- (a) the “30-day period” has the meaning given by section 15(7); and
  - (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 14.
- (8) 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 (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. 10  
15

## 17 Affirmative resolution procedure

- (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 14 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. 20
- (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. 25
- (4) 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. 30
- (5) 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.
- (6) In this section – 35
- (a) the “30-day period” has the meaning given by section 15(7); and
  - (b) the “40-day period” has the meaning given by section 16(7).
- (7) 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 (4), 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. 40

## 18 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 14 is as follows.
- (2) The Minister must have regard to – 5
  - (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. 10
- (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 –
  - (a) stating whether any representations were made under subsection (2)(a); and
  - (b) if any representations were so made, giving details of them. 15
- (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.
- (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. 20
- (6) 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. 25
- (7) 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 –
  - (a) a revised draft order; and 30
  - (b) a statement giving details of –
    - (i) any representations made under subsection (2)(a); and
    - (ii) the revisions proposed.
- (8) The Minister may after laying a revised draft order and statement under subsection (7) make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament. 35
- (9) 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 (7) and before it is approved by that House under subsection (8), recommend under this subsection that no further proceedings be taken in relation to the revised draft order. 40
- (10) Where a recommendation is made by a committee of either House under subsection (9) in relation to a revised draft order, no proceedings may be taken in relation to the revised draft order in that House under subsection (8) unless the recommendation is, in the same Session, rejected by resolution of that House. 45

- (11) Subsections (3) to (5) of section 14 shall apply in relation to the disclosure of representations under subsections (3)(b) and (7)(b)(i) of this section as they apply in relation to the disclosure of representations under subsection (2)(f)(ii) of that section.
- (12) For the purposes of subsections (4) and (8) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order. 5
- (13) 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 14.

*General* 10

**19 Calculation of time periods**

In calculating any period of days for the purposes of sections 15 to 18, 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.

**20 Combination with powers under European Communities Act 1972** 15

- (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 12(2) to 18 above apply to the order under section 2(2) of the European Communities Act 1972 as to the order under this Part; and 20
- (b) paragraph 2(2) of Schedule 2 to the European Communities Act 1972 does not apply.

**PART 2**

REGULATORS 25

*Exercise of regulatory functions*

**21 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.
- (2) Those principles are that— 30
- (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.
- (3) The duty in subsection (1) is subject to any other requirement affecting the exercise of the regulatory function. 35

## 22 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.
- (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. 5
- (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. 10
- (4) The duties in subsections (2) and (3) are subject to any other requirement affecting the exercise of the regulatory function.

## 23 Code of practice: procedure

- (1) Where a Minister of the Crown proposes to issue or revise a code of practice under section 22, he shall prepare a draft of the code (or revised code). 15
- (2) The Minister shall, in preparing the draft, seek to secure that it is consistent with the principles specified in section 21(2).
- (3) The Minister shall consult the following about the draft –
  - (a) persons appearing to him to be representative of persons exercising regulatory functions; 20
  - (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) 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). 25
- (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.

## 24 Functions to which sections 21 and 22 apply 30

- (1) Sections 21 and 22 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 21 and 22 apply.
- (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; 35
  - (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. 40

- (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 21 and 22 apply.
- (5) An order under this section may not specify regulatory functions conferred on or exercisable by any of the following – 5
- (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. 10
- (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. 15
- (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.
- (8) An order under this section must be made by statutory instrument. 20
- (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); 25
  - “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). 30

### PART 3

#### LEGISLATION RELATING TO THE EUROPEAN COMMUNITIES ETC

##### *Interpretation of legislation*

#### 25 References to Community instruments

- (1) In the Interpretation Act 1978 (c. 30), after section 20 insert – 35
- “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.” 40



- (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 – 5  
“(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 – 10  
“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.” 15

## 26 EEA agreement and EEA state

- (1) In the Interpretation Act 1978 (c. 30), in Schedule 1 (defined expressions), after the definition of “Crown Estate Commissioners” insert – 20  
““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.]”
- “EEA state”, in relation to any time, means – 25  
(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.]”
- (2) In that Act, in section 24 (application to Northern Ireland), in subsection (4), after “The Corporation Tax Acts” insert – 30  
“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 – 35  
““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. 40
- “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.”

- (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
  - (b) Scottish subordinate legislation (within the meaning of the Order referred to in subsection (3)) made before the commencement of this section. 5

*Implementation of Community obligations etc*

**27 Power to make orders, rules and schemes**

- (1) In section 2 of the European Communities Act 1972 (c. 68) (general implementation of Treaties) – 10
- (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”.
- (2) In Schedule 2 to that Act (provisions as to subordinate legislation) – 15
- (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”. 20
- (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, 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. 25
- (6) The powers of a Minister of the Crown under subsection (5) – 30
- (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;
  - (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; 35
  - (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. 40
- (7) The power under subsection (5) to make an order or regulations –
- (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)).
- (8) A statutory instrument or statutory rule containing an order or regulations under subsection (5) – 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;
  - (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. 10
- (9) In subsection (5) – 15
  - (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.
- 28 Power to make ambulatory references to Community instruments 20**

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, 25
  - (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, 30

the subordinate legislation may make express provision to that effect.

(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.” 35 40
- 29 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 45

- Parliament for approval by resolution of each House of Parliament and –
- (a) the instrument also contains provision made in exercise of a power conferred by any other enactment; and
  - (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. 5
- (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 subject to annulment in pursuance of a resolution of either House of Parliament; 10
  - (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; 15
  - (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; 20
  - (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 – 25
- (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; 30
  - (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 35
  - (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. 40
- (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. 45
- 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 – 50

- (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. 5
  - (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—
      - (i) is not subject to annulment in pursuance of a resolution of either House of Parliament; and 10
      - (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. 15
  - (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. 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.
- 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— 25
- (a) references to Parliament and to each or either House of Parliament are to be read as references to the Scottish Parliament; 30
  - (b) references to an enactment include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; and 35
  - (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).” 40

**PART 4**

## SUPPLEMENTARY AND GENERAL

*Supplementary***30 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. 5
- (2) The repeals in the Schedule do not affect the application of the 2001 Act in relation to the making of an order under section 1 of that Act giving effect (with or without variations) to proposals in a document laid before Parliament under section 6(1) of that Act before the day on which this Act comes into force. 10
- (3) The repeals in the Schedule do not affect 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).
- (4) The repeals in the Schedule do not affect – 15
- (a) any power to make an order under section 1 of the 2001 Act pursuant to section 4(4) of that Act (a “subordinate provisions order”) in relation to the subordinate provisions of any order under section 1 of that Act continuing in force by virtue of subsection (3); or
  - (b) the operation of sections 1 to 4 of that Act in relation to the making by virtue of paragraph (a) of any subordinate provisions order. 20
- (5) The repeals in the Schedule do not affect 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. 25
- (6) In this section “the 2001 Act” means the Regulatory Reform Act 2001 (c. 6).

**31 Consequential amendments**

- (1) In section 6 of the Deregulation and Contracting Out Act 1994 (model provisions with respect to appeals), in subsection (7), for the definition of “enforcement action” substitute – 30
- ““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 35
  - (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;”. 40
- (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”.

- (3) In Article 17 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 (S.I. 1996/1632 (N.I. 11)), in paragraph (1), for “section 1 of the Regulatory Reform Act 2001” substitute “section 1 or 2 of the Legislative and Regulatory Reform Act 2006”. 5

### *General*

## **32 General interpretation**

- (1) In this Act –  
“the Assembly” means the National Assembly for Wales; 10  
“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).
- (2) In this Act “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; or 15  
(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. 20
- (3) In subsection (2)(a) and (b) the references to a function –  
(a) include a function exercisable by or on behalf of the Crown;  
(b) do not include – 25  
(i) any function exercisable by any body of, or any person holding office in, the Church of England; or  
(ii) any function of conducting criminal or civil proceedings.
- (4) In subsection (2)(a) and (b) the references to an activity include –  
(a) providing goods and services; and  
(b) employing or offering employment to any person.

## **33 Commencement** 30

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

## **34 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. 35
- (2) In section 31 –  
(a) subsections (1) and (2) extend to England and Wales only;  
(b) subsection (3) extends to Northern Ireland only.
- (3) The repeals in the Schedule have the same extent as the enactments to which they relate. 40

**35 Short title**

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



## SCHEDULE

Section 30

### 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”. In Schedule 3, paragraph 11.	20
Statute Law (Repeals) Act 2004 (c. 14)	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.	
Wireless Telegraphy Act 2006	In Schedule 8, paragraph 9.	

# Legislative and Regulatory Reform Bill

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## B I L L

[AS AMENDED ON REPORT]

To enable provision to be made for the purpose of removing or reducing burdens resulting from legislation and promoting regulatory principles; 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.

*Brought from the Commons on 17th May 2006*

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