

## **Orders under the Localism Act 2011 (“Localism Orders”)**

The role of the Delegated Powers and Regulatory Reform Committee (DPRRC) of scrutinising certain types of delegated legislation includes the scrutiny of Orders laid under the Localism Act 2011 (“the 2011 Act”) - **Localism Orders**. The first Localism Order was laid only in March 2014 (the Draft Harrogate Stray Act 1985 (Amendment) Order 2014, laid by the Department for Communities and Local Government). However, since the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) came into force, the DPRRC has examined a number Legislative Reform Orders (LROs) under the 2006 Act. The procedures for Orders under the 2006 Act and the 2011 Act are not identical, but there is a good deal of common ground between them.

The Lords [Companion to Standing Orders](#) sets out how LROs are scrutinised by Parliament, and the role of the Committee. Also relevant are the [Localism Act 2011](#), in which sections 5, 6 and 7 deal with Localism Orders, and the [Legislative and Regulatory Reform Act 2006](#), to which reference is made to the Localism Act 2011.

Section 7 of the 2011 Act sets out the requirements for the Explanatory Document (ED) which must be laid alongside a Localism Order. In particular, it makes it clear that the ED must set out the Secretary of State’s reasons for considering that the conditions in section 6(2) are satisfied: namely, that

- (a) the effect of the provision is proportionate to the policy objective intended to be secured by the provision;
- (b) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (c) the provision does not remove any necessary protection;
- (d) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise; and
- (e) the provision is not of constitutional significance.

The ED must also provide information about any consultation undertaken, any representations received, and any changes made as a result.

There are similar requirements for the content of the ED to be provided when an LRO is laid, and the information provided on these points has been central to the DPRRC’s scrutiny of LROs. The Committee has made it clear that, when considering an LRO, its role is not to consider in depth the policy in the draft Order, but to consider whether it is appropriate to be made under the 2006 Act; if so, whether it meets the tests in the 2006 Act; and to consider the matters considered for other instruments by the Joint Committee on Statutory Instruments.

The DPRRC has a period of 30 days<sup>1</sup> during which to carry out its scrutiny.

In the case of an LRO, the extract from the Companion to Standing Orders gives the following summary of the interaction between the Department's proposal for Parliamentary procedure for the LRO, and any recommendation from the Committee's scrutiny:

“10.21 If the minister recommends negative resolution procedure, then that applies unless, within 30 days from the date when the draft order was laid, either House of Parliament requires affirmative or super-affirmative resolution procedure, in which case that applies. If the minister recommends affirmative resolution procedure, then that applies unless, within 30 days, either House requires super-affirmative resolution procedure, in which case that applies. If the minister recommends super-affirmative resolution procedure, then that applies.”

In the case of a Localism Order, it is open to the Committee similarly to recommend that any Order proposed for the negative resolution procedure should be upgraded to the affirmative (or super-affirmative) procedure. If however neither the Lords nor the Commons Committees recommend an upgrade, the negative procedure will apply in the usual way.

There is a procedure in the Lords (but not in the Commons) called the hybrid instruments procedure which applies to any affirmative instrument which “is such that, apart from the provisions of the Act authorising it to be made, it would require to be enacted by a private or hybrid bill”. So, any negative Localism Order which is upgraded to affirmative and which is decided by the Chairman of Committees in the Lords (on the recommendation of Counsel) to be hybrid will be subject to the hybrid instruments procedure. It is important to note that this procedure will apply even if the Commons upgrades but the Lords does not.

The purpose of the hybrid instruments procedure is to allow those whose private interests are affected by the instrument to have an opportunity to petition against it. Once the instrument is declared hybrid, there follows a 14-day petitioning period. If there are no petitions, the Chairman of Committees reports the fact to the House and the procedure ends. If there are petitions, they and the order are referred to a Hybrid Instruments Committee. If the Hybrid Instruments Committee decides that the petitioners have *locus standi* and that the matters complained of should be considered by a Select Committee, then, if the House agrees, a select committee considers the evidence and reports whether or not the order should be allowed to proceed.

Once the hybrid instruments procedure is concluded, and assuming that it is reported that the instrument should be allowed to proceed, the House will then consider a motion to approve the instrument.

In order to inform scrutiny, once the Department lays a Localism Order, it should provide 15 printed copies of the Order and of the accompanying Explanatory Document (ED), as well as 1 copy of the responses which it received to its consultation process and also of the

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<sup>1</sup> Not counting dissolution, prorogation, or adjournment of either House for more than four days. For example, the Legislative Reform (Payments by Parish Councils, Community Councils and Charter Trustees) Order 2013 was laid by DCLG on 11 November 2013, and the 30-day period ended on 15 December 2013.

Department's response to consultation, to the DPRRC Secretariat. (The Secretariat also requires an electronic copy of all these documents.)

In the House of Commons, the [Regulatory Reform Committee](#) is responsible for scrutiny of Localism Orders.