



Legislative and Regulatory Reform Act 2006

2006 CHAPTER 51

PART 3

LEGISLATION RELATING TO THE EUROPEAN COMMUNITIES ETC

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)—
 - (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)—
 - (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) ^{F1}
- (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.

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- (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;
 - (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;
 - [^{F2}(c) so far as exercisable in relation to a matter—
 - (i) within the legislative competence of the Assembly, or
 - (ii) in respect of which functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government,
 shall also be exercisable by the Welsh Ministers.]
- ^{F2F2}(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 [^{F3}the Welsh Ministers]^{F3}, 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)—
- (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;^{F4}...
 - (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 [^{F5}, and^{F5}]
 - [^{F6}(d) if made by the Welsh Ministers, shall be subject to annulment in pursuance of a resolution of the Assembly]^{F6}.
- (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.

Textual Amendments

- F1** S. 27(3) omitted by virtue of [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007](#) (S.I. 2007/1388), arts. 1(2), 3, **Sch. 1 para. 149(a)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\)](#) of [Government of Wales Act 2006](#) (c. 32))
- F2** S. 27(6)(c) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007](#) (S.I. 2007/1388), arts. 1(2), 3, **Sch. 1 para. 149(b)**(the

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- amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32))
- F3** Words in s. 27(7)(a) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1(2), 3, **Sch. 1 para. 149(c)**(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32))
- F4** Word in s. 27(8)(b) omitted by virtue of The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1(2), 3, **Sch. 1 para. 149(d)(i)**(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32))
- F5** Word in s. 27(8)(c) inserted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1(2), 3, **Sch. 1 para. 149(d)(ii)**(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32))
- F6** S. 27(8)(d) inserted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1(2), 3, **Sch. 1 para. 149(d)(iii)**(the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32))

28 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,
 - (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,
- 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.”

29 Combination of powers

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

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- “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—
- (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.
- (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;
 - (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;
 - (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;
 - (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—
- (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;
 - (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
 - (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.
- (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.
- 2B (1) This paragraph applies where, pursuant to paragraph 2(2) above, a statutory instrument containing provision made in exercise of the power conferred

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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—

- (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.
- (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
 - (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.
- (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.

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—

- (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
- (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).”

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