

# LEGISLATIVE AND REGULATORY REFORM ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Order-Making Powers**

##### **Procedure**

##### ***Section 14: Draft order and explanatory document laid before Parliament***

89. This section requires a Minister to lay before Parliament a draft of the order he wishes to make and an explanatory document. The information contained in the explanatory document is intended to assist Parliament in scrutinising the order. The list of matters that must be covered by the explanatory document is given in subsection (2). These include a general requirement for the Minister to give reasons for the provision he wishes to make, an explanation as to why the Minister considers that the preconditions in section 3 are satisfied, and information about the consultation he has undertaken.
90. Where the Minister wishes to make an order under section 1, subsection (2)(d) requires him (so far as it is appropriate) to provide an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens. The requirement to make and give such an assessment is intended to be proportionate to the nature of the order being made. In some cases the effect of the order will be worthwhile but minor and will not merit a very detailed assessment, in which case a brief statement will be included in the explanatory document to the order. Where appropriate it is expected that requirement under subsection (2)(d) for an assessment of the extent to which the provision would remove or reduce any burden or burdens may be met by quoting the assessment made in an Impact Assessment, or attaching that document to the explanatory document.
91. Subsection (2)(e) requires the Minister to identify and give reasons for any functions of legislating conferred by the order, and the procedural requirements which will have to be complied with when those functions are exercised.
92. Subsections (3), (4) and (5) set out provisions concerning the disclosure of representations made in response to consultation under section 13. Where a person makes representations in response to consultation and asks the Minister not to disclose those representations, the Minister must not disclose them in the explanatory document where such disclosure would constitute an actionable breach of confidence by any person (were it not for Parliamentary privilege). The Minister *need not* disclose information contained in representations relating to a person other than the consultee if it appears to him that such disclosure could adversely affect the interests of that other person and he has been unable to obtain the consent of that person. It should be noted that subsection (5) provides that these provisions do not affect any disclosure that is requested by, and made to, a Parliamentary committee charged with reporting on draft orders. So even if such information is withheld from the explanatory document,

*These notes refer to the Legislative and Regulatory Reform Act  
2006 (c.51) which received Royal Assent on 8 November 2006*

this would not prevent a Minister from providing the information to the Parliamentary committees on request.