

LEGISLATIVE AND REGULATORY REFORM ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Order-Making Powers

Procedure

Section 16: Negative resolution procedure

100. This section sets out the procedure which will apply where an order is to be made under the negative resolution procedure. The Minister may make an order in the terms of the draft he laid (allowing for any non-material changes he wishes to make) unless, within 40 days of the draft order being laid, either House of Parliament passes a resolution that the order may not be made. (The ability to make non-material changes to the draft order would permit, for example, the correction of any typographical errors identified by the committees.)
101. When the draft order is laid before Parliament, it is scrutinised simultaneously by a committee of each House charged with reporting to the House on the order. Subsection (4) provides that the relevant committee of either House can, at any time after the expiry of the period of 30 days beginning on the day the draft order was laid before Parliament and before the expiry of the period of 40 days beginning on the day the draft order was laid before Parliament, require that the Minister not make an order in the terms of the draft order, by making a recommendation in those terms. A committee may make such a recommendation on any grounds and, in the event that it does so, the Minister may not make the order unless the recommendation is overturned by a resolution of the relevant House in the same Parliamentary session. This provision (which is mirrored in the affirmative resolution and super-affirmative resolution procedures) therefore confers the ability on a committee of either House to prevent an order from being made.
102. Where a recommendation made by a committee is subsequently overturned by a resolution of the relevant House, subsection (8) provides that, when calculating the 40-day period, no account is taken of the days between the committee making the recommendation and the House overturning it. This ensures that, should a recommendation of a committee be overturned by the relevant House more than 40 calendar days after the laying of the draft order, each House nevertheless has the opportunity to resolve against the making of the order under subsection (3).