

LEGISLATIVE AND REGULATORY REFORM ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Order-Making Powers

Procedure

Section 18: Super-affirmative resolution procedure

106. This section sets out the procedure which will apply where an order is to be made under the super-affirmative procedure.
107. This is a two-stage procedure during which there is opportunity for the draft order to be revised by the Minister. During the initial period of 60 days beginning with the day on which the draft order was laid before Parliament, the relevant Parliamentary committees simultaneously consider and may report on the draft order, or either House may make a resolution with regard to the draft order. The Minister must have regard to any such reports and resolutions, as well as to any other representations made about the draft order during the 60-day period. Once the 60-day period has expired, if the Minister wishes to make the order with no changes, he must lay a statement in accordance with subsection (3). He may then make an order in the terms of the draft (allowing for any non-material drafting changes) but only if it is approved by a resolution of each House of Parliament.
108. Alternatively, if the Minister wishes to make material changes to the draft order he has laid, he must lay before Parliament a revised draft of the order and a statement in accordance with subsection (7) specifically setting out the revisions he proposes. (This revised draft order will be considered by committees of both Houses.) The Minister may only make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament.
109. Non-material drafting changes might be necessary as a result of any change of procedure the order was subject to (under the provisions in section 15).
110. However, subsections (5) and (9) provide that a committee of either House charged with reporting on the order can require that no further proceedings be taken on the draft by making a recommendation in those terms. This recommendation may be made on any grounds and can be made at any time after the laying of a statement in accordance with subsection (3), or after the laying of a revised draft order in accordance with subsection (8), and before the draft order is approved by a resolution of that House. Where such a recommendation is made by a committee, no further proceedings may be taken in relation to the order unless that recommendation is overturned by a resolution of the relevant House in the same Parliamentary session. This means the House will not proceed to an affirmative resolution and the Minister will therefore be unable to make the order. A committee of either House is thus able to prevent an order from being made.

111. Subsection (11) provides that the restrictions on the disclosure of representations made during consultation, which the Minister must make in the explanatory document laid before Parliament under section 14(2)(f), also apply so as to restrict the disclosure of representations made during the initial 60-day scrutiny period of the super-affirmative procedure which the Minister must make in his statement detailing those representations under subsections (3)(b) and (7)(b)(i).