

LEGISLATIVE AND REGULATORY REFORM ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Legislation Relating to the European Communities Etc

Implementation of Community obligations etc

Section 28: Power to make ambulatory references to Community instruments

147. **Section 28** inserts a new paragraph 1A into Schedule 2 to the 1972 Act. It enables any "subordinate legislation" (as defined by the new paragraph) which is made for a purpose mentioned in section 2(2) of the 1972 Act, to provide expressly that any reference in that legislation to a Community instrument is to be construed as a reference to the Community instrument in question as amended from time to time. (The definition of "subordinate legislation" in the new paragraph 1A(2) is not restricted to instruments made under section 2(2) of the 1972 Act; it also includes instruments made under other Acts, Acts of the Scottish Parliament or Northern Ireland legislation.) Such provision can only be made where it appears to the person making the legislation that it is necessary or expedient for references to Community instruments in the legislation he is making to have that ambulatory meaning.
148. The reason for this amendment is that it might otherwise be thought that such ambulatory references could not be made under the powers conferred by section 2(2) of the 1972 Act. An example of when this power might be useful is where a Community instrument contains lists or tables of technical detail which might be the subject of frequent updating or amendment. A person making legislation which refers to such an instrument could make use of this power in order to avoid the need for the legislation to have to be amended regularly in the future simply to reflect the updating of the Community instrument.
149. It is worth noting the relationship between this provision and the provision made by section 25. Where subordinate legislation refers to a Community instrument, the 1978 Act, as amended by section 25, will operate as described above so that the reference is taken as a reference to the Community instrument as amended up to that date. But the provision made by section 25 does not allow for the reference to be taken as including the instrument as amended after that date. Paragraph 1A makes provision for this.