

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 27: Power to make orders, rules and schemes

142. Section 2(2) of the 1972 Act enables the implementation of Community law which is not automatically part of UK law. The existing powers allow for implementation by regulations but do not allow for the making of orders, rules or schemes, and this section is designed to allow section 2(2) to be used in combination with delegated powers in other legislation which enable the making of orders, rules or schemes. So section 27 makes amendments to the 1972 Act and other enactments, so as to enable the power to make subordinate instruments under section 2(2) of the 1972 Act to be exercised not only by making regulations but also by making an order, rules or a scheme.
143. Subsections (3) and (4) make consequential amendments to section 29 of the Government of Wales Act 1998 and Schedule 8 to the Scotland Act 1998.
144. Subsection (5) enables a Minister to make an order or regulations to amend any enactment or subordinate instrument which refers to regulations under section 2(2) of the 1972 Act so that it also includes a reference to any order, rules or scheme made under that section. (Certain of the terms used in subsection (5) are defined in subsection (9).)
145. Subsection (6) enables the devolved administrations to make similar provision.
146. The procedure for exercising this power is set out in subsections (7) and (8). The power is exercisable by statutory instrument (so far as exercisable by a Minister of the Crown, the Scottish Ministers or the Assembly) and, where exercisable by a Northern Ireland department, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

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.

Section 29: Combination of powers

150. **Section 29** makes provision to enable the power conferred by section 2(2) of the 1972 Act (power to implement Community obligations etc) to be combined with delegated powers in other legislation where the procedures in each case are different.
151. It is generally not possible for a statutory instrument made under an enabling power in one Act to be combined with an instrument made under an enabling power in another, if the Parliamentary procedures to be followed under the two Acts differ. Sometimes it is desired to exercise the power in section 2(2) together with another power to create a single new regime. If the powers are subject to different procedures, it may not be possible to do so in a single instrument. It is this difficulty which is addressed by the section.
152. The Parliamentary procedures which apply to instruments made under section 2(2) of the 1972 Act are set out in paragraph 2 of Schedule 2 to that Act. That paragraph permits a choice of procedure: negative or affirmative.
153. New paragraph 2A allows for instruments which are made under section 2(2) and are subject to the affirmative procedure to be combined with instruments which would otherwise be subject to the negative resolution procedure or other less onerous procedures. In each case, the provision made under the non-section 2(2) power will be subject to the affirmative resolution procedure, rather than the less onerous procedures which would otherwise apply.
154. New paragraph 2B deals with the case where the negative resolution procedure is the one to be followed for the provision to be made under section 2(2) of the 1972 Act. The statutory instrument containing the provision to be made under section 2(2) of the 1972 Act can also contain provision which would otherwise have to be laid before Parliament after being made, but would not be subject to annulment nor have to be approved; or would not be required to be laid before Parliament. In this case, the provision made under the non-section 2(2) power will be subject to the negative resolution procedure rather than the less onerous procedure which would otherwise apply.
155. New paragraph 2C makes the modifications needed so that Scottish statutory instruments can also contain provision made under section 2(2) of the 1972 Act and under other delegated powers in other legislation even though the procedures to be followed under section 2(2) differs from the procedure required by the other legislation.