



Department
for Business
Innovation & Skills

LEGISLATIVE REFORM ORDERS

Guide for Policy Officials

MAY 2016

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Chapter 1: Overview of Legislative Reform Orders

What is a Legislative Reform Order?

1. A Legislative Reform Order (LRO) is a statutory instrument which can amend primary legislation, independently of a Parliamentary Bill. It is made under the powers of the Legislative and Regulatory Reform Act 2006 (LRRRA).
2. LROs are de-regulatory and can be used to remove or reduce burdens resulting from legislation as well as improve the way regulatory functions are carried out. They are scrutinised by two parliamentary committees and can be carried out throughout the year when parliament is sitting and so are a useful tool for routine and urgent deregulatory changes that are unable to find a bill.
3. LROs do however need policy, legal, economic and administrative support throughout the process

Why use a LRO?

4. They are a good option for:
 - de-regulatory measures that did not get a bill slot
 - necessary legislative changes that might not warrant a bill.
5. They can also be used in conjunction with a bill for example where a particular amendment might benefit from separate scrutiny and like Statutory Instruments they can be introduced throughout the year.

Timing

6. An LRO can be completed within six months after the consultation finishes, but most will take at least a year. They often take longer because of departmental resources, issues identified in consultation that need to be addressed and being affected by Parliamentary recesses. They can however be carried across parliaments.

Key features

Power to remove or reduce burdens

7. Under section 1 of the LRRRA a Minister of the Crown can make a LRO for the purpose of removing or reducing any burden to which any person is subject as a result of any legislation.

8. A “burden” is defined in s.1 (3) as:
 - A financial cost;
 - a financial cost;
 - an administrative inconvenience;
 - an obstacle to efficiency, productivity or profitability; or
 - a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
9. LROs can repeal and replace, amend or re-state legislation which is imposing burdens on any person, including a business, an individual, a voluntary organisation, or a charity.
10. They can only impose new burdens in limited circumstances where this is for the purpose of removing or reducing a burden on a person under section 1 of the LRRRA.

Power to promote regulatory principles

11. Under section 2 of the LRRRA a Minister can make a LRO to ensure that regulatory functions comply with better regulation principles and are carried out in a way that is:
 - Transparent;
 - Accountable;
 - Proportionate;
 - Consistent; and
 - Targeted only at cases in which action is needed.

Combination with European Communities Act 1972 powers

12. Section 20 of the LRRRA enables the order-making powers under sections 1 and 2 to be exercised together with the power under section 2(2) of the European Communities Act 1972 (ECA). This enables a LRO to implement European Union law to remove burdens from pre-existing legislation which are unnecessary following the implementation of new EU requirements.

LRRRA preconditions

13. Any LRO must meet the preconditions set out in section 3 of the LRRRA:
 - There are no non-legislative alternatives that will achieve the intended outcome of the provision;
 - The effect of the provision is proportionate to the policy objective;

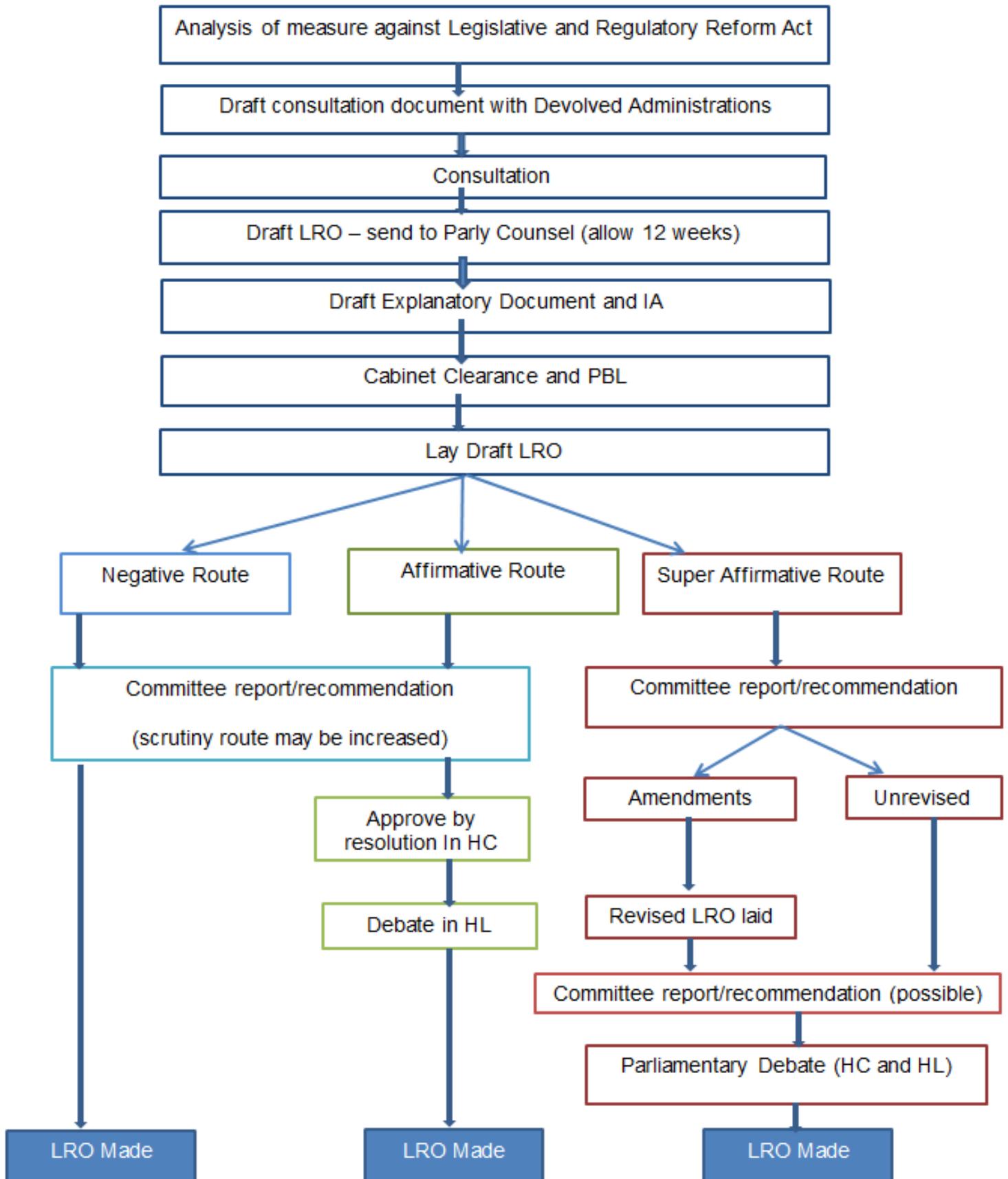
- The provision strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- The provision does not remove any necessary protection;
- The provision does not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- The provision is not constitutionally significant; and
- Where a provision will restate an enactment, it makes the law more accessible or more easily understood.

LRRRA restrictions

14. A LRO cannot:

- remove burdens which fall solely on Ministers or Government Departments (ie someone else must also benefit), except where the burden affects the Minister or department in the exercise of a regulatory function;
- confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- Impose, abolish or vary taxation;
- create a new criminal offence or increase a penalty for an existing offence above certain limits. It can re-state existing penalties over those limits;
- provide authorisation for forcible entry, search or seizure or for the compelling of giving of evidence unless the LRO repeals provisions to that effect and the new provision is exercisable for similar purposes; or
- amend or repeal any provision of Part 1 of the LRRRA or the Human Rights Act 1998.

Flowchart of the Legislative Reform Order process



Chapter 2: How the order-making powers work

Introduction

1. The pro-forma in appendix B will help you to scrutinise your proposal against the criteria of the LRRRA 2006 to ensure that there is 'fit' with the order-making powers. The pro-forma should be completed with your departmental lawyers and sent to your BRU and copied to the Better Regulation Executive.
2. Before using an LRO, you need to show that you have considered other alternative options for achieving your policy goal. These could include:
 - Secondary legislation, using a specific order-making power under an existing Act.
 - non-legislative path:
 - improved guidance,
 - voluntary code of practice,
 - some form of self-regulation.

Political considerations when using a LRO

3. The two scrutiny Committees, the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulator Reform Committee in the House of Lords have a cross party membership and neither is whipped. Both have equal status in scrutinising LROs and either can veto a draft LRO so you will need to achieve a broad cross party consensus to get your proposal accepted. A Committee veto can only be overturned by a resolution of the House.
4. For highly contentious and political matters primary legislation remains the best option

LROs and devolved administrations

5. The LRRRA 2006 applies to the whole of the UK – but its application in the different parts of the country reflects the devolution settlements of Scotland and Wales. It is important that you ensure your proposals fit in with these settlements. If, after considering the relevant settlements, you are still unsure as to how the settlements might affect your proposal, you should contact the Scotland and Wales Offices or the Scottish Government or the Scottish Parliament and Welsh Assembly Government directly.

England

6. To satisfy the requirements of English Votes for English laws, you will also need to set out the geographical extent of LRO in the Explanatory Document for any House of Commons debates that may be required. Further guidance can be found www.gov.uk/government/publications/english-votes-for-english-laws-proposed-changes. We recommend but it is not compulsory English Votes for English Laws section is completed for all LROs rather than just the ones put forward for the affirmative and super affirmative route. This is because both the Committees are able to increase the scrutiny of an LRO and the majority of LROs will use the affirmative route. By including the English Votes for English laws section you will save time by not having to relay if the scrutiny process is increased.
7. The powers of the devolved legislatures and administrations are governed by the Acts establishing them: the Northern Ireland Act 1998; the Scotland Act 2012 and the Government of Wales Act 2006. Detailed guidance can be found on the Cabinet Office website <https://www.gov.uk/guidance/guidance-on-devolution>

Scotland

8. LROs cannot amend or repeal Acts of the Scottish Parliament, instruments made under them, or Acts of the Westminster Parliament which make provision about devolved matters. This prohibition does not affect the powers to make consequential, supplementary, incidental or transitional provision in sections 1(8) and 2(7) LRRA.

Northern Ireland

9. Section 10 prevents a LRO made under LRRA 2006 from amending or repealing any Northern Ireland legislation, except under the powers to make consequential, supplementary, incidental or transitional provision.

Wales

10. The Welsh Ministers do not have their own LRO making powers. You should always assume that your LRO will apply to Wales; unless or until the Welsh Ministers make it clear they would prefer that the Government develop England-specific proposals.
11. If a single LRO for both England and Wales is not agreed, the Welsh Ministers/Assembly may decide to proceed with their own reforms, not using a LRO. Alternatively, specific arrangements would need to be negotiated on specific arrangements for Wales, for inclusion in the LRO that is to provide for reform in England, with the Wales Office facilitating that negotiation.
12. Because LROs generally will apply in Wales as well as in England, you should get in touch with Welsh Government and Wales Office for advice. Even where

you feel there are not devolution implications, it is advisable to confirm this with them at the earliest possible stage.

13. You must gain the consent of the Welsh Ministers where your proposal confers a function upon Welsh Minister, modifies or removes a function of Welsh Ministers, or restates a provision conferring a function upon Welsh Ministers. Such consent can be obtained through correspondence between your Minister and the relevant Welsh Minister.
14. You should seek 'outline' consent from the Welsh Ministers before the formal consultation exercise so that you can refer to it in the Explanatory Document which accompanies the proposed LRO. Welsh Ministers may wish to attach caveats to their outline consent in case the proposal is subsequently amended
15. There may be a duty to consult the National Assembly for Wales. If you need the consent of the National Assembly for Wales, the Assembly has to consent to it through a plenary debate. This should be taken forward in parallel with the order being laid in Parliament. The LRO and associated documents will need to be laid in the Assembly in parallel with (but normally the day after) it is laid in Parliament.
16. The Assembly's Standing Orders require that the Assembly's Constitutional and Legislative Affairs Committee scrutinise the order before reporting to the Assembly. Following this a debate is held and the order can then be approved.
17. In the case of a super-affirmative LRO, if changes are made to the draft LRO after the Welsh Ministers and/or the Assembly have given consent and before the LRO is made, you may need to seek a refreshed consent from the Welsh Ministers and/or Assembly. Consent is not needed if the LRO makes only consequential, supplementary, incidental or transitional provision under sections 1 (8) and 2 (7).

Territoriality – Channel Islands and the Isle of Man

18. The Act provides that a LRO which amends or repeals any legislation extending outside England, Wales, Scotland and Northern Ireland may have the same extent as that legislation. Therefore, if the primary legislation extends to the Channel Islands and/or the Isle of Man, the LRO which amends that legislation can do likewise.
19. A LRO cannot however have a greater territorial extent than the original legislation. So, you cannot amend a piece of primary legislation that does not currently affect the Channel Islands and/or the Isle of Man so as to extend its provisions to cover them. Cabinet Office's Constitution Unit can provide further advice.

Sub-delegation

20. LROs under the LRRRA 2006 can confer new functions of legislating. The categories of persons on whom powers of legislating can be conferred are restricted to:
- A Minister of the Crown;
 - Persons on or to whom functions are conferred or have been transferred by an enactment (e.g. local authorities and regulators); and
 - A body or the holder of an office created by the LRO itself. If a LRO is merging bodies into a new body, the Act permits the LRO to confer on this new body the power to legislate.

Fire Safety Inspection

When reforming a regulatory regime to reduce or remove burdens, it may be sensible to extend a Minister's regulation making powers provided by an existing Act, to increase the frequency of fire safety inspection on buildings that house highly flammable substances, but reduce the frequency on inspection of those buildings that are at low risk of fire and instead increase their self-assessment requirements.

21. A LRO may confer a function of legislating on the Welsh Ministers, the First Minister of Wales or the Counsel General to the National Assembly for Wales.
22. If your LRO confers a power to legislate on a Minister, the LRRRA stipulates that when the Minister comes to exercise this power (once the LRO has been passed), he must do so by making a Statutory Instrument (SI) laid in Parliament for approval.
23. The LRRRA also requires that you must stipulate in the 'parent' LRO whether the SI would be subject to the affirmative resolution procedure or the negative resolution procedure. This applies also to such powers conferred on the Welsh Ministers, the First Minister for Wales or the Counsel General. The affirmative or negative resolution procedure in that context, however, is a reference to the procedure in the National Assembly for Wales.
24. However, a power to legislate conferred by a LRO on someone who falls within the second or third categories of person in section 4(1), does not have to be exercised by a Statutory Instrument approved by Parliament. This is because the power to legislate could be exercised, for instance, by Local Authorities who are given the power to issue byelaws, or a regulator set up by the LRO who is given the power to set statutory standards of inspection. It would not always be appropriate for such powers to be subject to Parliamentary approval using SI procedures. The Act provides you with flexibility to restrict these legislative powers as you consider appropriate.

25. A LRO cannot make provision for anyone on whom a LRO confers powers to legislate, to delegate further any function of legislating. However, the LRRRA would not prevent a LRO restating a provision already in legislation which itself conferred a legislative function, even if it did not comply with the restrictions in section 4 of the Act.

Preconditions

26. Section 3 of the Act places preconditions on the use of LROs and you must address each of these preconditions and provide evidence of how the proposal meets each relevant one in the Explanatory Document. It is not sufficient to state that the condition is not relevant; you will need to give an explanation as to why it does not apply. The Committees use this section to gauge the extent your proposal meets each of the preconditions of the LRRRA. If the evidence is not there they will either need to ask for further information or they could decide that the condition has not been met.
27. Section 3(2)(a) is founded on the better regulation principle that legislation should not be made unless it is absolutely necessary. So the Explanatory Document will need to provide evidence that you have considered non-legislative/alternative means for your policy and why you have concluded that these are not appropriate.
28. Under section 3(2)(b) you will need to show that the effect of the LRO provision is proportionate to the policy objective and that it goes no further than is needed to remedy the problem which it is intended to address. Evidence from the consultation should help illustrate this. The issues that you need to show are: that the aims of the LRO are legitimate and well-defined; and that the way in which the Minister proposes to achieve the aim is both lawful and workable.
29. Section 3(2)(c) requires that the Minister is satisfied that provision in the LRO, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it. Again, evidence from the consultation should illustrate this. In the Explanatory Document you should cite both the consultees who agreed that the LRO strikes a fair balance and those that did not. The Parliamentary Scrutiny Committees are likely to be influenced in their opinion on this specific point by looking at the number of yes and no answers provided and the strength of the arguments.
30. You must ensure that your proposal would not remove any necessary protection, such as the checks and balances within a particular regulatory regime. This is an area that is particularly scrutinised by the Delegated Powers and Regulatory Reform Committee.
31. The protection does not have to be statutory in nature and does not have to be for the purposes originally intended by Parliament. For instance, the Sunday trading laws originally were passed for reasons of religious observance, whereas now they are just as likely to be seen as providing protection for employees.

32. The concept of necessary protection can, for example, relate to economic, health and safety protection and the protection of civil liberties. It can also extend to protection for the environment and national heritage.
33. Not all protection need be seen as necessary forever. For example, the law forbidding 16- and 17-year-olds from working in the bar areas of public houses was amended in 1997. The legal protection of young people in these circumstances was no longer deemed necessary, although the Department involved had to provide compelling evidence to support this view.
34. The precondition in section 3(2)(e) is that the provision made by a LRO does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. This precondition recognises that there are certain rights that it would not be fair to take away from people by a LRO. This includes human rights, but it is wider than that and could for instance include the statutory right to receive compensation from an employer following a serious accident at work.
35. The last test under section 3 (2)(f) is that provision in the LRO must not be of constitutional significance. This precondition is intended to make clear that LROs cannot be used for the delivery of significant constitutional reform. They can make constitutionally insignificant changes to legislation which could be considered constitutional.
36. For example, an amendment to asylum and immigration legislation to reduce the burden of unnecessary form-filling. The legislation itself could be considered as constitutionally significant, but such amendment would not be constitutionally significant and is clearly rooted in better regulation aims.
37. An example of the type of proposal which this precondition would preclude would be any proposal to permit the Prime Minister to sack judges by amending the Supreme Court Act 1981.

Chapter 3: Consultation

Consultation Checklist

- Does it cover the key arguments and issues?
- Have you included questions where needed to gather information to address the LRRRA 2006 criteria.
- Have you included your Impact Assessment?
- Have you included the wording on disclosure of responses (Annex C)?
- Have you consulted other government departments and devolved administrations interested in your policy?
- If your proposal extends to Wales have you consulted the National Assembly for Wales and the Wales Office?
- Has your consultation document and impact assessment been collectively agreed by relevant Cabinet Committees, RRC and PBL?
- Have you identified all interested parties to send the consultation to?

The aims of LRO consultation

1. Section 13 of the LRRRA requires you to consult on the draft LRO. The aim is to get feedback from those affected by the policy proposal about its suitability and workability. In particular you are gathering evidence so that you can demonstrate that your LRO meets the conditions listed in the LRRRA.
2. If you are consulting on a proposed LRO as part of a consultation on a wider policy issue you need to include in the consultation document sufficient detail about the proposed LRO for a consultee to reach an informed view of it.
3. It is also possible in a consultation document to propose a LRO as one of two alternative possible delivery mechanisms for a policy. If you choose to do this and wish only to consult once, there must be sufficient detail about the proposed LRO for consultees to come to an informed decision.
4. You do not need to include a draft of the LRO when you go out for consultation. If you wish to publish the draft LRO in the consultation, you will have to have cleared it with Parliamentary Counsel beforehand where, as in the majority of cases, it amends primary legislation. This can take up to 12 weeks.
5. The advantage of not including the draft legal instrument is that you can consult with stakeholders while Parliamentary Counsel is considering the draft LRO, thereby saving time.

Role of Scrutiny Committees

6. The Committees are charged with scrutinising both the policy issues associated with the draft LRO and whether it is within the vires of the LRRRA. The consultation responses will form a key part of the evidence for their decision on a draft LRO. A copy of the list of those consulted (including their addresses) and the consultation document should be sent to both Committees when they are issued.
7. The Parliamentary Scrutiny Committees will consider whether the consultation was adequate, meaningful and genuinely enabled consultees to understand, judge and comment on your proposals and their effects. They will also want to ensure that consultees had sufficient time to respond.

Drafting the consultation document

8. All consultations should be carried out in accordance with the Government's consultation principles and issued by a minister of the crown and should cover the following areas:
 - How the current arrangements work and how you propose to change them.
 - Why the legislation exists; its purpose; who is affected by the current arrangements and if they apply to the whole of the United Kingdom or just to England
 - Why the legislation needs reforming and how burdens will be removed or reduced (section 1) and/or regulatory functions will be made more consistent with better regulation principles (section 2) or the proposal falls under section 20 of the LRRRA.
9. A key aim of an LRO consultation is to gather evidence that you can use in your Explanatory Document to persuade the scrutiny Committees that your LRO meets the criteria set out in the LRRRA. You may wish to ask some or all of the following questions in your consultation to help provide this evidence.
 - [For section 1 orders] Do you think the proposals will remove or reduce burdens as explained in paragraph x above?
 - [For section 2 orders] Do you think the proposals will secure that regulatory activities will be exercised so that they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed as explained in paragraph x above?
 - Do you have views regarding the expected benefits of the proposals as identified in Chapter x of this consultation document and addressed in the Impact Assessment.
 - Is there any empirical evidence that you are aware of that supports the need for these reforms?, please provide details

- Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?
 - Are the proposals put proportionate to the policy objective?
 - Do the proposals taken as a whole strike a fair balance between the public interest and any person adversely affected by it?
 - Do the proposals remove any necessary protection?
 - Do the proposals prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph XX ? If so, please provide details.
 - Do the proposals make the law more accessible and easily understood?
10. You should draw consultees' attention to the fact that their responses will be disclosed to the scrutiny committees. The content of the consultation responses will normally be disclosed to Parliament except in the unusual circumstances set out in section 14(3) and (4) of the LRRRA. The standard wording on disclosure can be found appendix D and must be included in the consultation document with a box to tick if they do not wish to have their response disclosed.
11. Because of the curtailed parliamentary scrutiny process you need to let consultees know that they are able to raise their concerns directly with the Committees once the LRO has been laid. The Committees' contact details and accompanying text are set out in appendix D.

Who to consult

12. Section 13 of the LRRRA requires you to consult
- those organisations which are likely to be substantially affected by the proposals;
 - statutory bodies, or their representatives, if the proposals relate to their functions;
 - the National Assembly for Wales – if the proposals apply to Wales;
 - the Law Commission, the Scottish Law Commission and/or the Northern Ireland Law Commission in cases where it is considered appropriate.
13. You need to include those who are likely to benefit by the change as well as those who may have been protected in some way by the legislation under review and may be adversely affected by the reform.
14. Section 13 of the LRRRA requires you to consult with the Welsh Ministers where your proposals, so far as applying in or as regards Wales, relate to any matters in relation to which the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly exercise functions. This requirement should be interpreted widely, for example, anything which affects local authority

functions would be captured since the Welsh Ministers have responsibility for local Government in Wales.

How long to consult for

15. The period allowed for consultation should follow the general Cabinet Office Consultation Principles. The <https://www.gov.uk/government/publications/consultation-principles-guidance> Scrutiny Committees will look at the consultation to ensure it has been adequate and stakeholders had sufficient time to respond.

Fast Track and Impact Assessments

16. IAs are needed for LROs that impact on business or the voluntary sector as they will score against the Business Impact Target. The fast track route can be used and a validation IA sent to the Regulatory Policy Committee when seeking final clearance.

Drafting the LRO

17. There is guidance on ‘Responsibilities of Departments and Parliamentary Counsel in drafting orders’ (in appendix C) and on LION. Points to note include:
- Instructions to Parliamentary Counsel should not normally be sent until the policy is completely settled; and
 - Instructions should include an account of the policy as it stands and an explanation of how the draft LRO gives effect to the policy, drawing attention to any particular drafting or vires issues
 - Parliamentary Counsel usually needs 12 weeks to approve the LRO. A standard form preamble which should be used for all LROS can be found in appendix G.
18. If two or more LROs cover a related subject matter, so that one LRO will need you to change the contents of another, the preferred option is to deal with them sequentially. All the necessary amendments should be contained in one order (including the consequential amendments to the other LROs) and should be laid after them.
19. The Parliamentary Legal Advisors of the Commons and Lords Regulatory Reform Committees are prepared to offer a preliminary view on legal vires of a draft LRO once cleared by Parliamentary Counsel.

Collective agreement

20. Collective agreement for the publication and content of the consultation, with the impact assessment should be obtained from the relevant Cabinet Policy Committees. This is usually the Home Affairs Cabinet Committee (HA) and the

Reducing Regulation Committee (RRC) and the Parliamentary Business and Legislation Committee (PBL) because you are amending primary legislation. This can be done in a joint clearance letter.

Obtaining the Queen's consent

21. If your proposal affects in any way the personal property or interests of the Crown or the interests of the Duchies of Lancaster or Cornwall, the consent of the Queen or the Prince of Wales must be obtained. When you come to laying the draft LRO, you should make clear to the Committees that this consent has been obtained. The Queen's Consent must also be signified orally to both Houses: in the Lords this is by a Minister who is a Privy Counsellor.
22. Legal advisers should consult representatives of the Crown Estates Commissioners, the Duchies and Her Majesty's solicitors, Messrs Farrers at an early stage of policy development. All letters should be copied to the Crown Estates, both Duchies and Farrers.
23. When our draft order is ready to be placed before Parliament, you should seek The Queen's formal Consent. You should draft letters for your Secretary of State's Private Secretary to send to the Private Secretary to The Queen and to the Private Secretary to the Prince of Wales explaining the purpose of the provision and the way in which it affects the Crown, and The Queen's and Prince of Wales' private estate, and asking for consent. Copies of this letter, together with two copies of the draft LRO, should be sent as above to Crown Estates Commissioners, the Duchies and Her Majesty's solicitors, Messrs Farrers.
24. The Private Secretary to the Queen will not reply until they have received any comments from the copyees. If any amendments are made to the LRO before the final laying you will need to consult the Crown again.

Publication and publicity

25. Once you have published the consultation document and alerted stakeholders you should send electronic copies to both the committee clerks along with a list of the consultees. The scrutiny committees have also requested that three hard copies be sent to the Regulatory Reform Committee and one copy to the Delegated Powers and Regulatory Reform Committee.

Chapter 4: Drafting the Explanatory Memorandum

Checklist for draft LRO and Explanatory Document

- Have you changed your proposal in light of consultation responses?
- Have legal advisors in the devolved administrations seen the draft order if necessary?
- Has approval from Wales been sought if needed?
- Have you allowed 12 weeks for Parliamentary Counsel to check and approve your LRO?
- Do you have PBL clearance for the proposed draft LRO, the explanatory document and the IA?
- Does the draft LRO contain the standard preamble in appendix G?
- Does the Explanatory Document (ED) provide all the information required by section 14 of the LROA (see ED template in appendix ?)
- Is the IA included or annexed to the Explanatory Document
- Does the Explanatory Document contain:
 - Dates when the consultation took place
 - List of all consultees
 - A statement on LRO applicability to Scotland, Northern Ireland and Wales?
 - A list of statutes affected by the LRO, with relevant extracts
 - Consolidated and pre-consolidated (if appropriate) text certified as accurate by your lawyers
 - Complete set of consultation responses

Results of the consultation exercise

1. The LRO process does not require 100% unanimity, but if the consultation responses do not wholly support your policy, you will need to set out the concerns raised by the consultees and how you will address them or the reasons for disagreeing with them in the Explanatory Document.
2. The Committees may rarely invite the opposing parties and others to an evidence session.

Do you need to re-consult?

3. If your LRO needs to be changed substantially you may need to consult again on those elements that have been changed (see section 13(2) LRRA). You should also consider whether you need to re-consult the devolved administrations since they may be affected by the changes and any statutory consultees like the Law Commission again.
4. If you do decide to re-consult, it may be acceptable to consult only some of the original consultees or an entirely new class of consultees because of the nature or limited effect of the change. If though, the change is substantive you should inform all consultees so that they comment on it.
5. Dropping one or more proposals entirely may not require further consultation, unless doing so alters the nature and effect of the remaining proposals. If you do decide to drop a proposal, the explanatory document should refer briefly to it and the reasons for doing so.
6. If you need to re-consult, you will need to seek collective agreement from the relevant Cabinet and PBL Committees again if the proposed changes go beyond the terms of the original policy clearance.

Parliamentary Counsel Approval of the LRO

7. Parliamentary Counsel need to approve the draft LRO, which can take up to 12 weeks. Appendix B sets out Parley Counsels Approach. If your draft LRO has already been approved by Parliamentary Counsel e.g. during the consultation stage and you wish to make changes it will need to be re-approved before laying even if the changes are only minor.
8. Where a LRO affects a devolved territory, you should make sure that you or your opposite numbers in the Scotland, Wales and Northern Ireland Offices have sent it to their legal advisers and to the devolved administrations.
9. A 'Pre-consolidated Text', i.e. a text showing what the Act(s) being amended would like if all the amendments proposed in the draft LRO are passed, needs to be prepared with your lawyers and laid with the LRO. A 'Pre-consolidated Text' may not be needed where the LRO repeals and replaces entire provisions – and you should check with the Clerks to the Committees in cases of doubt.

Drafting the explanatory document

10. The scrutiny committees take the quality of the Explanatory Document very seriously and expect the Explanatory Document to explain how the policy meets each of the statutory tests. The template in Annex E has been designed to help you do this. You do not have to use it and are free to adapt it to meet your requirements.

11. The Explanatory Documents has to be laid at the same time as the draft LRO and should:
 - set out all the arguments in support of your proposal;
 - provide factual evidence gathered from the consultation exercise;
 - draw on the Impact Assessment to support your arguments;
 - convince the two Parliamentary Scrutiny Committees that the LRO is worthwhile, sensible and within the vires of the LRO order-making powers;
 - address any possible reservations or criticisms of the proposed LRO provisions head-on
 - which Parliamentary procedure you are using for the LRO and reasons for your choice.
12. The Committees have the final say on procedures and can increase it within the first 30 days of the LRO being laid. If either Committee requires a more onerous procedure for the proposed LRO, you will need to change the preamble to the LRO to reflect the new procedure.

What should the explanatory document include?

13. The explanatory document should start with the recital in appendix E and must:
 - explain under which order-making power or powers the provisions are made;
 - introduce and give reasons for the provision;
 - explain how all the relevant preconditions in section 3(2) have been met or how the LRO will make the law more accessible and easily understood;
 - contain a recommendation for the scrutiny procedure and give reasons for the recommendation;
14. For a LRO under section 1:
 - show how the provisions will remove or reduce burdens. This assessment is likely to be crucial for Parliamentary Scrutiny Committees' judgement whether to recommend the LRO be made;
 - identify and give reasons for the LRO conferring any powers to legislate, and what Parliamentary resolution procedures will apply to exercising these functions;
 - give details of the consultation and consultation responses:- including the dates of the consultation/s, a full list of all those consulted and a link to the consultation document previously sent to the Parliamentary Scrutiny Committees. It should also set out a full analysis of the substantive comments from the consultation exercise, together with the Department's responses to them; and

- provide details of any changes made to the LRO as a result of the consultation. If no changes are to be made to the proposals to meet any objections, the summary will need to explain why this is not considered to be necessary.
15. It is important that the Explanatory Document includes a convincing argument on why the sub-delegation of legislative powers by LRO is necessary and defines clearly what the power to legislate permits. Where the LRO confers powers on a Minister, it will need to explain why the Minister has chosen either a SI subject to the affirmative or negative resolution procedure.
 16. In addition, the Regulatory Reform Committee has set out how it considers and reports on the following in its scrutiny of LROs:
 - whether the LRO has been the subject of adequate consultation and takes appropriate account of the responses received;
 - whether the proposal “imposes a charge on the public revenues or contain provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribe the amount of any such charge or payment”.
 - whether it is compatible with the European Convention on Human Rights, together with a broad description of the main human rights issues concerned and
 - Whether the proposal appears to be incompatible with any obligation resulting from membership of the European Union. You need to explain how your LRO fits in with European obligations.
 17. The disclosure provisions in the Act mean that, if a respondent requests that his or her response is not disclosed, you will either have to write back requesting a change of mind or anonymise the response. If a response is anonymised you will still have to identify the issues raised and respond to them. The Committees can request sight of the response as originally submitted. This is to guard against undue influence being brought to bear on Ministers.
 18. Where there are factual disagreements arising from the consultation, in particular on the financial implications (e.g. for local authorities or other enforcement agencies) you will be expected to have resolved these before the draft LRO is brought forward. It will not be sufficient simply to report a difference of opinion on the facts.
 19. If you plan to lay more than one LRO on the same topic over a particular period, you should make this clear in the explanatory document. It helps to set out the wider picture together with a timetable for achieving it, to demonstrate to the Committees that your approach is clear and coherent.

Which Parliamentary Resolution Procedure to recommend?

20. The level of scrutiny recommended by the Minister will depend on:
- the complexity;
 - the potential scope and impact of the LRO; and
 - the level of opposition to the proposals, evident from the consultation exercise.

Negative Resolution Procedure

21. Under the negative resolution procedure the Minister may make a LRO unless within 40 days of the LRO being laid, either House of Parliament passes a resolution that the LRO may not be made or the Committee vetoes the proposal.
22. This procedure affords the least Parliamentary influence over a LRO and would therefore only be suitable for minor and technical LROs. LROs going through the negative resolution procedure are likely to be the exception, rather than the rule.
23. You should also be aware that for some areas e.g. licencing even if the amendment is technical, because of the wider policy interest, the Committees are likely to recommend it should use the affirmative procedure.

Affirmative Resolution Procedure

24. Under the affirmative resolution procedure, the Minister may make an LRO if after 40 days of the draft being laid in Parliament, the draft LRO is approved by a resolution of each House of Parliament. This procedure may be appropriate for LROs that have more extensive impact, but which are still straightforward and about which consultation respondents did not raise any major concerns.

Super-Affirmative Resolution Procedure

25. The super-affirmative resolution procedure is a two-stage scrutiny procedure with the first scrutiny period lasting 60 days and the second lasting 15 sitting days or 25 sitting days in the Commons (depending on whether the draft LRO has been revised unexpectedly). There is no formal second scrutiny response time within the Lords but they usually report within a similar timeframe.
26. During the first scrutiny period the Committees simultaneously consider the draft LRO and may report or make a resolution on it. The Committees may take evidence from stakeholders and the Minister or departmental officials during this period. Once the Committees have given their recommendations, there is opportunity for the draft LRO to be revised by the Minister. The Minister must then lay an unrevised or revised LRO.

27. For the second stage the Committees have a further 15 sitting days to consider an unrevised draft LRO or 25 sitting days to consider a revised LRO. At the end of the second scrutiny period the Minister can then make the LRO if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both Committees.
28. The super affirmative procedure is the only one that gives the Parliamentary Scrutiny Committees a chance to recommend changes to the LRO. It is therefore the most appropriate procedure for complex and wider-reaching LROs.

Impact Assessments (IA)

29. An Impact Assessment should accompany the laying of the draft LRO for scrutiny. The IA accompanying the LRO should follow the general guidance on IAs as set out in the Better Regulation Manual.
30. If your policy is in scope of Business Impact Target you will need to send a validation stage impact assessment to the RPC at final stage clearance for them to assess the claimed impact to business.

Technical Standards Directive

31. If the Technical Standards Directive applies, you will need to submit the draft LRO to the European Commission and observe a three-month standstill period before the LRO is made or brought into force.
32. You should submit your proposal via a central contact point in the Department for Business Innovation and Skills and explain in the Explanatory Document the purpose, duration and outcomes of any such scrutiny by the European Commission.

LROs requiring formal consent from the Welsh Ministers

33. If your LRO will affect Wales, relates to matters where the Welsh Ministers, the First Minister or the Counsel General exercise functions, you will need to consult the Welsh Ministers.
34. Where your proposal confers, modifies, removes or restates a function of Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government you must gain the consent of the Welsh Ministers. You will also need to gain consent of the National Assembly for Wales if your LRO makes a provision which would be within the legislative competence of the Assembly.
35. The consent of the Assembly and Welsh Ministers is obtained through a motion debate in plenary session of the full Assembly. The Assembly carries a motion to the effect that it agrees that a LRO in the form of a draft lying in the table office be made. If the Assembly is not sitting, provision has been made for Assembly officers to consent to a LRO in the form of a draft being made.

Chapter 5: Laying the Draft LRO

Checklist for laying the LRO

- Have you agreed a laying date with the Better Regulation Executive?
- Have you got collective PBL agreement for the draft LRO and the Explanatory Document to be laid?
- Have you prepared for the LRO and documents to go on your website?
- Have you prepared all the supporting material for laying (consolidated text, pre-consolidation text, list of consultees and responses)?
- Have you sent the parliamentary scrutiny committees a copy of the draft documents electronically 2 weeks ahead of laying?

Preparing to lay the draft LRO

1. Departments are responsible for laying the draft LRO and all accompanying documents. When the proposal is ready you need to agree a laying date with the Better Regulation Executive, who coordinate with the Parliamentary Clerks. You should also contact the PBL Secretariat to discuss your plans and timing.
2. You will need to seek collective agreement from PBL and the relevant Cabinet Committees for the proposal to be laid. This can be done in parallel. This will be for agreement on the final draft of the statutory instrument and the Explanatory Document and the IA which should accompany the letter from the relevant departmental Minister to the Leader of the House. The letter will normally reserve your Minister's right to make minor changes both to the Explanatory Document and to the draft statutory instrument.
3. In parallel you should send the papers electronically to the RRC and DPRC clerks two weeks in advance of laying to give them the opportunity to scrutinise the draft before laying and consider whether legal drafting points arise. This helps avoid the need for re-laying if any corrections are needed and helps them prepare briefing papers for the Committees. Any documents sent to the Scrutiny Committees in advance of laying are sent on the express understanding that they are drafts and subject to revision, and that they are for the Committee staff only and are not circulated to Committee members.
4. At this stage only a draft of the LRO and Explanatory Document with the IA are formally required to be laid before both Houses. However, the Parliamentary Scrutiny Committees have asked for the following additional information to be provided:
 - a list of consultees

- a list of all relevant statutes (this can be annexed to the explanatory document) along with copies of the relevant parts of those statutes;
- a copy of all responses to the consultation (NB if you have carried out a joint consultation on more than one LRO it is advisable to make early contact with the Committees to agree how the responses should be presented (jointly or separately));

If your LRO inserts amendments into existing legislation:

- a consolidated text of all the legislation to be amended, signed and certified as accurate by Departmental lawyers on the face of the text;
- a “Pre-consolidated Text” (if your reform merely involves a simple amendment of legislation) that is a text showing what the Act(s) being amended would look like if all the amendments proposed in the draft LRO were passed, also signed and certified as accurate by Departmental lawyers on the face of the text.

Laying the proposed LRO

5. On the specified date, your Parliamentary Branch will need to lay the LRO and Explanatory Document in:
 - the Commons Journal Office;
 - the Lords Printed Paper Office;
 - the Regulatory Reform Committee, and the Delegated Powers and Regulatory Reform Committee; and
 - the House of Commons Vote Office.
6. Your Parliamentary Branch will need to have deliver the following number of copies set out in the table on the next page at the same time that you lay the proposed LRO.
7. You will also need to provide electronic copies of the final versions of the documentation to the two Scrutiny Committees, the [Regulatory Reform Committee](#) (RRC) and the [Delegated Powers and Regulatory Reform Committee](#) (DPRRC) at the point of laying.

Documents needed by Parliament

Document	RRC	DPRRC	Commons Vote Office	Lords Printed Paper Office	Total
Draft LRO	15	10	100	50	175
Explanatory Document	15	10	100	50	175
Consolidated Text	3	1	20	5	29
Formal Response to consultation	2	1	0	0	3
Full Set of Consultation Responses	2	1	0	0	3

Withdrawing a LRO

- If you wish to withdraw the proposed LRO after it has been laid, you should inform your Parliamentary Branch They will lay formal letters before Parliament informing the Commons Journal Office, the Lords Printed Paper Office, the two relevant Committees and the House of Commons Vote Office that the LRO should be withdrawn.

Publication of LRO and explanatory document

- Departments are responsible for ensuring that proposed LRO and Explanatory Documents are published on their own departmental website once they are laid, you should ensure that consultees are made aware that the draft LRO has been laid. This is important in case anyone wishes to make a representation to the parliamentary scrutiny committees.

Negative and affirmative LROs

- For negative and affirmative LRO Parliament has 30 days from the moment of laying to recommend a more onerous procedure. The Committees will often ask questions about the LRO during their scrutiny period. If after the 30 days, the Committee does not recommend a more onerous scrutiny procedure the process is as set out below.

Negative resolution procedure

11. If after 40 days, both Committees recommend that the LRO be made, the Minister can make the LRO.
12. In the Commons Negative Orders will need to be debated if any Committee member recommends the Order not be made. Similarly in the Lords negative orders will be debated if a Member of the House tables a 'prayer' motion against the Order
13. If either Committee recommends that the LRO not be made, including in the terms of the veto under s16 (4), the Minister may not make the LRO, unless the Committee's recommendation is overturned by resolution of the House in the same Parliamentary session.

Affirmative resolution procedure

14. If after 40 days both Committees recommend that the LRO be approved, the Minister can seek the approval by resolution of each House of Parliament. Affirmative and Super-Affirmative procedures will need to be made by resolution in both houses.
15. In the Commons, if non-Committee members disagree with the motion a debate will be required (no more than an hour and a half) – if the Commons Committee disapproves of a LRO this debate will last no longer than three hours.
16. If either Committee recommends that the LRO not be approved, in the terms of the veto under s17 (3), the Minister may not make the LRO, unless the recommendation by either or both Committees is overturned by resolution of the relevant House in the same Parliamentary session.

Super-affirmative procedure: initial scrutiny

17. The initial scrutiny period lasts 60 days (including weekends but excluding any recesses of more than four days). This period is a statutory requirement in the LRRRA 2006 and is non-negotiable.
18. The Committees will consider the proposal against the requirements of the LRRRA 2006, in particular the list of preconditions in section 3 and the requirements for the Explanatory Document in section 14 and 15. The Lords DPRRC will also continue to take into account whether it considers that the proposed use of the delegated powers in 2006 Act is appropriate.
19. At the discretion of the Commons Committee, any MP interested in the subject-matter can attend its meetings and question witnesses – but he/she cannot vote.
20. The Clerk will usually write with requests for information directly to the responsible officials. It is the officials' responsibility to supply evidence direct to

the Committees, copied to Parliamentary Branches. The Committees may also write to your Minister asking questions.

Presentation by officials

21. During the initial scrutiny period of 60 days, the Committees may invite oral evidence from departments and take expert advice. Deadlines set by the Committees for providing evidence must be met and Ministers are expected to attend to give evidence if invited to do so.
22. Officials may separately give a factual presentation on the proposal at an informal session with the Commons Committee – and the Lords Committee should they request it too. The presentation usually happens at the first available Committee meeting after laying. No formal transcript is taken. The DPRRC will not as a rule take evidence on a draft LRO, but on occasion it may decide to do so.
23. The Commons Committee expect the team giving the presentation to be able to talk authoritatively about the proposal and its context. Usually Departments have fielded 2 or 3 officials – the team leader and legal adviser. The presentation is factual in nature, explaining the background, the current law and the burdens that flow from it – as well as how you propose the reform will address them. It usually lasts 20–30 minutes followed by questions from members.
24. Committee members will have particular interests and approaches based on their party and constituency. The Committee will be particularly interested in the consultation – who was contacted, the responses stakeholders provided and the steps taken to address any issues raised and the reasons for disregarding them. Members will also be very interested in the arguments used to demonstrate that the draft LRO meets all the preconditions in section 3.
25. The Committee will usually write with further questions (which can be detailed) following the presentation, which will need to be dealt with by correspondence.
26. The Committees are willing to discuss with departments any evidence received from other stakeholders and the department's views on it. It is also normal for Government's written evidence to be circulated to other witnesses and published on the Parliament website. The written evidence and transcripts of oral evidence will be published as an annex to the Committee's report.

Consideration of Committee reports

27. At the end of the 60 days the Committees will report their findings and state that:
 - a draft LRO in the same terms as the proposals should be laid before the Houses for final scrutiny; or
 - the proposals should be amended before a draft LRO is laid before Parliament; or

- the LRO should not be proceeded with.
28. If either or both of the Committees have decided to veto the proposed LRO, the Government can either:
- Abandon its proposal altogether; or
 - withdraw the draft LRO and re-lay an amended version; or
 - Seek to overturn that veto by a resolution of the House.
29. The departmental Minister is required to take account of the Committees' reports and any other representations made during the 60 day period before finalising the draft LRO and making any necessary changes to the preamble. You will need to consider each representation carefully, and detail its contents and your reaction to it in the statement that accompanies the draft LRO for final scrutiny.
30. Parliamentary Counsel should be involved if any changes affect the drafting of primary legislation. There would probably be no need for wider clearance if the substance of the proposal was unaffected.
31. There is no obligation to accept all of the Committees' recommendations but you will need to have very good reasons for not doing so. If one of the Committees does not find your reasons satisfactory, the Committee may veto the LRO. To maximise the chance of the LRO still being made, any reasons for the Minister's disagreement with the Committees will need to be set out clearly in the accompanying statement for the revised LRO when it is laid as a draft for second stage or final scrutiny.

Further consultation

32. The Committees may recommend that you need to consult again on aspects of the proposal or with different consultees. They may also recommend that the consultation cover particular amendments that the Minister should, in their view, make to the proposals.
33. If you decide to re-consult, you may consult only on those aspects of the proposed LRO that are affected, rather than re-starting the entire consultation exercise, but you will need to ensure that the consultation fully addresses the Committee's recommendations.
34. If the changes to the proposed LRO are substantive, you should use the consultation exercise to revise the data on costs and benefits. This will enable you to refresh the full IA and attach it to the accompanying Statement at final scrutiny stage.
35. If the proposed amendments go outside the scope of the original request for collective agreement, you may need to seek this again, along with the consent of the Welsh Assembly and/or ministers if needed.

36. Once any necessary agreements and consents have been secured, you should re-cast the draft LRO, ensure that your departmental lawyer amends the proposal in line with agreed policy and make sure he/she sends it to Parliamentary Counsel before laying it in parliament.

Rejecting a Committee recommendation

37. The Government has the option of trying to overturn the Committees' decision by a resolution of both Houses. If the Minister has decided to do this, they would need to have very good reasons to present in support of the decision in debate. You will need to clear your approach with PBL Committee and with the Better Regulation Executive.
38. If the Scrutiny Committees do not agree with each other or you will need to broker a compromise deal between the Committees with the Committee Clerks and if necessary the Better Regulation Executive. If a compromise position between the Committees cannot be reached, the LRO will fall if one of the Committees opposes it.

Chapter 6: Super Affirmative

Second Stage Pre-legislative Scrutiny

Checklist for Second Stage Scrutiny

- If the draft is unrevised you only need to lay the accompany statement
- If revised – have you incorporated the necessary changes requested by the Committees?
- Have you included amendments in response to any representations received during the 60 day period?
- Have you explained the reasons for any changes in the Accompanying Statement ?
- Have you made the necessary changes to the preamble?
- Have you included a commencement date?
- Have you got Welsh consents where needed?
- If necessary has the final Pre consolidated text been certified as accurate and dated by your lawyers?
- Have you sent the required hard copies of the documents to Parliament?
- Have you published copies of your documents on your website?

Laying an unrevised draft LRO

1. At the end of the first stage scrutiny period, if you do not want to make any changes to the draft LRO, you need to lay a statement in Parliament which provides details of any representations made by stakeholders. You do not need to re-lay the draft LRO. The Commons Committee then has 15 sitting days for final consideration of the LRO and the accompanying statement and the House of Lords will usually report within the same time frame.

Preparing the revised draft LRO

2. If you wish to lay a revised draft LRO to take into account the changes:
 - requested by the Committee for example, you will need to ensure that:
 - any necessary changes are made to the preamble and Explanatory Note;
 - the draft LRO includes a commencement date. This can be either a specified date or a formula such as “this order will come into force 28 days after the day on which it is made”.

3. Unless there are very good reasons LROs should come into force on the common commencement dates either in April or October.
4. The following wording should appear in italics at the top of the first page:

“A draft LRO laid before both Houses of Parliament under section 18 (7) of the Legislative and Regulatory Reform Act”
5. If you forget to change the recital and the reference to section 14(1) remains, then formally you will be starting the initial scrutiny again.

Preparing the accompanying statement

6. A statement needs to be laid before Parliament alongside the draft LRO. If the LRO has not been revised since the first scrutiny stage, the statement should say whether any representations were made during the first 60 day scrutiny period and provide details of any representations.
7. If the draft LRO has been revised, the accompanying statement should:
 - Summarise the reports of both the Committees and explain the changes, if any, that have been made to the proposals as a result
 - State whether any other representations were received during the 60 day period and, if so, whether any changes were made as a result.
 - Where relevant explain the reasons for not accepting a Committees’ recommendation and the supporting evidence for that decision.
 - If you have consulted again include an analysis of the responses and a description of the substantive points raised and the Department’s reaction to them.
 - If the changes to the proposal are substantive, you should include a refreshed Impact Assessment. This should draw as appropriate on information provided during a re-consultation exercise.

Preparing other required documents

8. The Committees’ recommendations and conclusions should be reported carefully and precisely. In particular you should not refer to the Committees having ‘approved’ the draft LRO. The statement should concentrate on recommendations and the Department’s response to them.
9. The other required documents are:
 - Consolidated text and Pre-consultation text: If the draft differs from the proposal at initial scrutiny, a copy of the Consolidated Text and Pre-consolidated Text should be attached to the statement, signed and certified as accurate by Departmental lawyers on the face of the text as before;

- Names and addresses: the Committees need the full names and addresses of those who have made representations so that they can contact them if need be. Any person who makes representations will also be sent the relevant Press Releases by the Committees when they report;
- Full set of responses: if any representations were received during the 60-day scrutiny period, they should be forwarded to the Committee. Similarly if you re-consulted, you should attach the responses.

Giving notice

10. You do not need to seek collective agreement to lay the draft LRO for final scrutiny, unless the proposal has been substantively amended. You should liaise with the Committees directly about timing.
11. As during the initial scrutiny, if you can supply Committees with copies two weeks in advance, this will help them to prepare the necessary briefing papers. Any documents sent to the scrutiny Committees in advance of laying are sent on the express understanding that they are draft and subject to revision, and that they are for the Committee staff only and are not circulated to Committee members.
12. The final scrutiny stage completes the pre-legislative stages of the LRO process. You will need to give notice to:
 - the Chief Whip's Offices for them to arrange for the draft LRO to be included in the Parliamentary Order Papers (the agenda of the day's Parliamentary business). This step is crucial in the Lords given the need to negotiate a slot with the Opposition and other groups.
 - your Parliamentary Branch as they assume responsibility for the affirmative motion stage and then making the LRO; and
 - your departmental lawyer who will need to prepare the final version of the LRO (i.e. no longer a draft) ready for eventual signature by the Minister.

Laying the draft LRO for final scrutiny

13. Once any necessary changes have been made to the draft LRO, it can be re-laid for final scrutiny by the Committees.
14. Your Parliamentary Branch should lay the draft LRO, accompanying statement and Pre-consolidated Text (if appropriate) and provide the Committees with their copies at the same time. You will need 207 copies of the draft LRO and accompanying documents (and 3 of the Pre-consolidated Text if appropriate).

Documents needed by Parliament

Document	RRC	DPRRC	Commons Vote Office	Lords Printed Paper Office	Total
Draft LRO	15	10	100	75	200
Accompanying Statement	15	10	100	75	200
Consolidated Text	3*	1*	20	10	34
Pre Consolidated Text	2*	1*	0	0	3

**if changes made during first stage scrutiny*

15. The final/ second stage scrutiny period of 15 sitting days for an unrevised LRO and 25 sitting days for a revised LRO is not a statutory requirement but is set out in the Commons Regulatory Reform Standing Orders. The House of Lords Committee also tries to report within this timetable.
16. The second stage scrutiny's purpose is to check that the Department has honoured any undertakings and responded appropriately to any Committee recommendations or representations received during the 60 day period. It is at this stage that the Committee can also invoke their right of veto if they wish to use it.
17. If a mistake is discovered or there is a sudden need to make a change, the only recourse is to withdraw the LRO (and if necessary, the statement), and re-lay it amended.
18. If for any reason you wish to withdraw the draft LRO after it has been laid your Parliamentary Branch will have to do so.
19. Both Committees will produce final reports on the draft LRO. Assuming that they are content, they will report that the LRO can proceed to the motion to agree.

Chapter 7: Approval motion and making the LRO

Checklist for Approval Motion

- Have you received consent from Welsh Assembly/Ministers if required?
- Has your Parliamentary Branch arranged a date for a debate in the Lords and tabled the Motion to Approve the LRO in the Commons?
- Have the scrutiny periods elapsed?
- Have you prepared briefing and speaking notes for you Minister for the Lords debate?
- Has your lawyer removed the ‘draft’ references of the LRO?
- Have you arranged for your minister to sign the LRO?
- Have you contacted the National Archives for an SI number and to arrange for publication on the legislation.gov?
- Have you informed your stakeholders about the introduction of your LRO?

1. A LRO using the negative resolution procedure will be made unless either relevant Committee recommends that the LRO should not be made in the terms of the veto provided in s16(4). Technically either House could vote that the LRO not be made under s16(3), following an objection from the Committee which does not engage the veto.
2. For affirmative and super-affirmative LROs, the Committees report to their respective Houses what their recommendation is. The Houses will then debate (as necessary) and vote on the report. There is no requirement to lay the LRO again after the Committee has reported.
3. The procedure leading up to the final making of the LRO differs in the two Houses. However you will need to allow for the necessary full scrutiny period to have elapsed before following the approval procedures outlined below.

Commons procedure

4. The full scrutiny period must have elapsed before the approval procedures outlined below are started.
5. In the House of Commons the procedure is covered by [Standing Order 18](#). If the Committee members vote unanimously to approve the draft LRO, the motion to approve it is put to the House forthwith (i.e. without debate).

6. You will also need to take account of the English Votes for English Laws requirements which should be set out in the Explanatory Document.
7. If the vote is not unanimous, the Committee's report is debated for up to 1½ hours followed by a vote to approve the LRO on the Floor of the House. In this case you will need to prepare briefing for your minister.
8. If the Committee wishes to oppose the LRO it can either use the veto or formally object to the LRO, which falls short of vetoing the LRO. A three hour debate is then triggered in the House under [Standing Order 18](#) (but this is very rare)
9. If the Minister still wishes to pursue the LRO they are faced with two options, to either:
 - abandon the draft LRO and start again with an amended draft; or
 - table a Motion to disagree with the Committee report.
10. Ministers should take advice from the Whips in both Houses PBL Secretariat and the Cabinet Office if they wish to do this.

Lords procedure

11. In the House of Lords, following the publication of the Committee's final report, the Lords Whips Office will schedule a debate on the LRO.
12. If the debate takes place in the Chamber, it will be on a motion to approve the LRO in the name of the Minister. If the debate takes place in the Grand Committee, it will be on a motion to consider the LRO in the name of the Minister.
13. For the debate on the LRO, the Department must prepare:
 - a briefing sheet on a single A4 sheet, setting out the purpose and effects of the proposal, its general acceptability, the extent of the consultation undertaken and the rigours of the scrutiny it has undergone; and
 - speaking notes for your Lords Minister, together with appropriate background briefing, for the Lords Debate. (The same would apply in the Commons in the event of a debate).
14. Where a LRO has already been debated in Grand Committee, the approval motion on the floor of the House is usually moved formally (i.e. without debate) by the same Minister at a later date. However, as it is technically open to any Member to speak on or contest the approval motion even at this stage, the Minister should be supplied with a briefing sheet explaining the content of the LRO, what scrutiny it has undergone, and the points raised/addressed in the debate, as well as lines to take on any possible challenges. The Government Whips Office can provide a brief on the form of words the Minister needs to use to move the motion.

Disagreeing with the Committees' opinion

15. If you believe that there is a strong argument for trying to overturn one or both of the Committee's recommendations that the LRO should not be made, you will need to obtain clearance from PBL Cabinet Committee and consult the Chief Whip's Office and the business managers on potential repercussions of doing this.
16. In the highly unusual instance that both Houses support the Minister's Motion to overturn the committee's veto or objection, a Motion to approve the draft LRO itself would be put forthwith.

Consent from Welsh Ministers

17. Before making the LRO, you will need to check that the Welsh Ministers have formally consented to the final version of any LRO (where relevant).

Preparing the final LRO

18. Before the debate in the Lords, the legal adviser should prepare the final version of the LRO, by removing references to its draft status and making any other technical changes needed. This means that the Minister will be in a position to sign the LRO immediately after the last House has affirmed the LRO. You cannot make substantive changes at this stage.

Making the LRO

19. After the LRO has been approved by both Houses, the LRO can be made and signed by the responsible Minister. The 'date made' is the date it is signed and the 'commencement date' is the date it comes into effect which should be stated on the LRO itself.
20. Regulation affecting business is expected to commence only on either in April or October in line with the Common Commencement Dates (CCD). Your LRO should come into force on one of these two dates. You can however in your write-round letter make a case for it to come in on a different date.
21. Once the LRO has been made you or your Parliamentary Branch must liaise with the National Archives to obtain an SI number and to arrange publication on legislation.gov website.

Appendix A: Proforma

PROFORMA FOR THE ANALYSIS OF POTENTIAL ORDERS TO BE MADE UNDER THE LEGISLATIVE AND REGULATORY REFORM ACT 2006

This pro-forma is designed to help departments decide whether or not they can deliver reforms using the order making powers under Part 1 of the Legislative and Regulatory Reform Act 2006 (the Act). It needs to be completed with advice from departmental lawyers.

Before completing the pro-forma, please refer to the Explanatory Notes accompanying the Act, <http://www.legislation.gov.uk/ukpga/2006/51/notes> and in particular paragraphs 18-113 which set out the purposes for which the order-making powers under Part 1 of the Act may be used.

If you decide to go ahead with your LRO please inform your Better Regulation Unit and the Better Regulations Executive.

DETAILS OF YOUR PROPOSALS

LROs under Section 1 of the Act

Have you identified a burden that you seek to remove or reduce? Section 1(3) defines a burden as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

Who is affected by the burden?

How does the burden result from legislation? Please identify the relevant legislation?

How do you propose to remove the identified burden? Do you have robust empirical evidence as to whether the proposed legislative changes will remove or reduce the identified burden?

Will the LRO impose any new burdens? – Please refer to paragraphs 32 and 33 of the Explanatory Notes which set out the limited circumstances under which an LRO can impose a new burden.

LROs under section 2 of the Act

Which regulatory functions will be affected by the proposed LRO?

How will the proposed LRO secure that the exercise of regulatory functions complies with the principles of good regulation? The principles of good regulation are that regulatory activities should be carried out in a way which is; transparent; accountable; proportionate; consistent; and targeted only at cases where action is needed.

Will your proposed LRO include provisions to:

- modify the way in which regulatory functions are exercised by any person;
- amend the constitution of a body that exercises regulatory functions established by or under an enactment;
- provide for the transfer or delegation of the regulatory functions conferred on any person;
- Create a body to which regulatory functions are to be transferred; or
- Abolish a body whose regulatory functions are to be transferred to another body.

Does the proposed LRO confer any new regulatory function or abolish any regulatory function? – Section 2(6) prohibits an LRO from conferring any new regulatory function, or varying or abolishing any existing regulatory function. If your proposal does confer any new regulatory function or abolish any regulatory function and it can be shown that burdens resulting from legislation are removed or reduced, it may be possible to do so by LRO under section 1.

LROs seeking combination with powers under the European Communities Act 1972

Do you propose to combine the order-making power in Part 1 with the power to make orders under s. 2(2) of the European Communities Act 1972 (section 20 of the Act)? Please provide details if this are the case.

Preconditions and Restrictions

The Minister cannot make an LRO under section 1 or section 2 of the Act unless he considers that the preconditions in section 3 are met. Please set out below how your proposal meets each precondition:

The policy objective could not be satisfactorily achieved by non-legislative means (section 3(2)(a)) (Please provide details of non-legislative options that have been considered and why they were ruled out)

The effect of the provisions are proportionate to the policy objective (section 3(2)(b))

The provisions of the proposed order will strike a fair balance between the public interest and the interest of any person adversely affected by them (section 3(2)(c))

The provisions of the proposed order will not remove any necessary protections (section 3(2)(d))

The provisions of the proposed order would not prevent a person from exercising any right or freedom which they might reasonably expect to continue to exercise? (section 3(2)(e))

The provisions of the proposed order are not constitutionally significant (section 3(2)(f))

If the proposal restates an enactment that it must make the law more accessible or more easily understood (section 3(4))

Restrictions

Even where the preconditions of section 3 are met, you should be aware that LROs under Part 1 of the Act cannot:

Confer or transfer any function of legislating on anyone other than (section 4):

- a Minister;
- persons or bodies that have statutory functions conferred on, or transferred to them prior to the proposed order; and
- a body or the holder of an office which you are proposing to create using the order itself.

The order cannot make provision delegating any function of legislating.

- Impose, abolish or vary taxation (Please refer to section 5 in the Act) and paragraphs 64-66 of the [Explanatory Notes](#) for further [guidance](#)
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits (see section 6 in the Act and paragraphs 67-73 of the [Explanatory Notes](#) for further guidance)
- Authorise forcible entry, search or seizure, or compel the giving of evidence (Section 7) (Please see paragraphs 74-75 of the [Explanatory Notes](#) for further guidance)
- Amend or repeal any provision of Part 1 of the Act (Please refer to section 8 in the Act and paragraph 76 in the [Explanatory Notes](#) for further guidance.
- Amend or repeal any provision of the Human Rights Act 1998 (Please refer to section 8 in the Act and paragraph 76 in the [Explanatory Notes](#) for further guidance)

Please confirm that none of the above points apply.

Devolution

What is the territorial extent of your LRO?

Do you need agreement of the Welsh Ministers for your proposals? To assess this, consider whether:

- your LRO confers, modifies or removes any function of the Welsh Ministers, First Minister for Wales or Counsel General to the Welsh Assembly Government;
- your LRO restates any provision which confers a function on any of them;
- any provision under your LRO could be made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of any of their functions?

Do you need the agreement of the National Assembly for Wales? Does your LRO make provision which is within the legislative competence of any of their functions?

A LRO cannot amend or repeal any Northern Ireland legislation except under the powers to make consequential, supplementary, incidental or transitional provision.

A LRO cannot make provision which is within the legislative competence of the Scottish Parliament except under the powers to make consequential, supplementary, incidental or transitional provision.

See sections 77-79 of the [Explanatory Notes](#) for further guidance.

Appendix B: Parliamentary Counsel

Responsibilities of departments and Parliamentary Counsel in drafting Orders under Part 1 of the Legislative and Regulatory Reform Act 2006

This note concerns the role of Parliamentary Counsel in relation to Orders under Part 1 of the Legislative and Regulatory Reform Act 2006 ('Orders'). It has been agreed between the Office of the Parliamentary Counsel ('OPC') and the Department for Business, Innovation and Skills on behalf of all government departments.

Preliminary

The chief function of OPC as regards an Order is to vet its drafting in relation to any amendments or modifications of primary legislation. A draft Order may not be laid until it has been approved by Parliamentary Counsel. The aim is to enable Counsel to check the drafting of an Order to ensure that (a) it is effective and (b) it is drafted clearly and consistently with other primary legislation.

Counsel will also consider questions of vires and can give advice and assistance about other aspects of Orders.

OPC will allocate the proposed Order to a particular Counsel. Whilst Counsel must give priority to work on current Bills, OPC will always aim to ensure that any deadlines relating to the Order are met. Counsel will also aim to keep the department informed about progress, and to make them aware of any possible delays.

However, there is always a risk that requests for approval or advice which are sent at the last minute will not be dealt with in time, so early engagement with OPC is always recommended.

Consulting Counsel prior to drafting the Order

Departments may find it helpful to consult OPC on their initial proposals to make an Order once their lawyers have looked at it. This will enable Counsel to mention any preliminary concerns about vires, or other matters, and to comment on the proposed timetable (particularly in terms of when he or she can expect to receive the Order).

When considering a timetable, departments should have regard to the following matters:

- it is always desirable to send an Order to Counsel as soon as possible, particularly if it is long or complex;

- however, departments should also bear in mind other factors, such as how settled the policy is, any vices or other difficulties, and any political or other deadlines;
- an Order may be sent to Counsel before consultation, after consultation, or simultaneously with consultation. The advantage of sending a draft before or at the same time as consultation is that this minimises delays in progressing the Order (but see the further points on this, below);
- an Order should not normally be sent to Counsel until the policy is settled. If for reasons of urgency a draft needs to be prepared before the policy is settled, the department should make this clear to Counsel and indicate when final decisions will be made;
- the timetable should ideally allow 12 weeks for vetting (that is, for the complete process from sending a draft of the Order to Counsel through to receiving final approval from Counsel), though in many instances a shorter period can be agreed, subject to any unforeseen difficulties with the Order, or other unrelated factors which may impact on the timetable.

Steps to be taken before circulating an Order for general consultation

If an Order is to be subject to consultation, the department should consult Counsel as to whether it ought to be vetted in advance, and if so the likely time this will take.

The department should keep Counsel informed about progress against the timetable (and in particular of any likely delay in sending the Order to Counsel). Changes to the timetable should be discussed between the department and Counsel.

Parliamentary Scrutiny Committees should be kept informed of any delays to agreed laying dates.

Sending the draft Order to Counsel

Once the Order is finalised (or at another time agreed with Counsel), the department should send Counsel the draft Order along with a commentary relating to it.

The exact form of the commentary, and how much detail is needed, will depend on the Order (though a copy of the consultation document is unlikely to be sufficient). Counsel will be happy to discuss what would be helpful, but in any event the following are likely to be needed:

- an account of the policy as it stands and an explanation of how the draft Order gives effect to the policy;
- a brief analysis of the legislation which the Order amends, including any relevant subordinate legislation (if the legislation is straightforward, it may suffice simply to bring it to Counsel's attention);
- an explanation of the provisions in the Order which amend primary legislation;

- an account of the vires in the Legislative and Regulatory Reform Act 2006 relied upon for each substantive provision;
- an analysis of any devolution issues;
- if relevant, an explanation of the territorial extent.

If policy changes may be made after the Order is sent to Counsel, whether as a result of a change of stance in the department or in response to consultation, it will assist Counsel if he or she is made aware of this.

The Order and commentary (and any related documents) can be sent by e-mail. It is useful to include contact details and general availability.

Vetting an Order

The primary responsibility of Counsel, as noted above, is to vet the drafting of the Order in relation to provisions which textually amend or modify primary legislation.

Counsel will in particular consider:

- whether the amendments work technically;
- whether the amendments deliver the policy, including whether there may be any unintended consequences (though it is the responsibility of departments, not OPC, to ensure that the provisions of the Order ultimately give effect to the particular policy);
- whether amendments consisting of new text are clearly drafted;
- whether such amendments are consistent with the existing text (and do not throw elements of existing provisions into doubt), and are in accordance with good drafting practice, including whether the drafting is consistent with provision in other legislation.

If the department is not content with what Counsel proposes, he or she will be happy to discuss the existing draft and to consider alternatives.

Counsel will consider the vires and will raise any concerns, though it is for the department to decide how to proceed. If vires remains an issue, it may be appropriate for the Attorney General to be invited to give a view.

Counsel may offer comments on other matters if he or she thinks this would be helpful. For example, Counsel may suggest alternative legal mechanisms for achieving the required result. He or she can also advise about other aspects of the Order, such as to commencement, transitional provision or extent.

Normally Counsel will not offer comments on amendments to subordinate legislation (but may be able to offer assistance if requested).

After approval has been given

Counsel can advise on Parliamentary procedure in relation to an Order or on any issues that arise after the Order is laid.

Any changes to those parts of the Order which amend or modify primary legislation need to be approved again.

If a change is made to a provision which does not amend or modify primary legislation, Counsel should be given the opportunity to consider the new draft.

If the policy underlying the version of the Order approved by Counsel changes after approval has been given, it is advisable to seek Counsel's advice on whether the existing text will deliver the policy.

Similarly, when an Order has been approved and laid before Parliament, the department should inform Counsel of amendments suggested by a Parliamentary Scrutiny Committee, particularly those relating to amendments or modification of primary legislation. The department should not agree to any such amendments without the approval of Counsel.

When an Order has been made, send Counsel an electronic copy. If the Order is not proceeded with, or is not made for any other reason, Counsel should be notified. This will enable OPC to keep its records up-to-date.

Appendix C: Consultation template and text

Example of a template for consultation

Summary of proposals

What is being consulted on?	The proposals relate to	Relevant paragraphs.
How will these proposals be taken forward and when will they be implemented?	We intend that the proposed changes to legislation are made through a Legislative Reform Order under the Legislative Reform Act 2006. Subject to the outcome of the consultation, we propose that the changes are implemented from xxx 20XX	
Consultation	<p>This consultation is being made in accordance of the Legislative Regulatory Reform Act 2006 and the terms of the Government's consultation principles.</p> <p>All responses should be received by xxx</p>	Annex

Text on the LRRRA and Scrutiny Process for the consultation document

This consultation paper sets out in detail the Government’s proposals for reforming the legislation governing xxxxx

[Brief description of why changes are needed.]

[Brief description of who the proposals will affect and how.]

We propose to introduce the reform by means of a Legislative Reform Order (LRO) under section x of the Legislative and Regulatory Reform Act 2006 (LRRRA). This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA. Information on LROs can be found at:

www.parliament.uk/business/committees/committees-archive/regulatory-reform-committee/regulatory-reform-orders. Further information on the Cabinet Office

consultation principles can be found at www.gov.uk/government/publications/consultation-principles-guidance. Views are invited on all aspects of the consultation paper.

Parliamentary scrutiny

Both Houses of Parliament scrutinise draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords

Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

Copies of Committees’ reports are available on the Parliament website at

Regulatory Reform Committee in the Commons; and

Delegated Powers and Regulatory Reform Committee in the Lords

How to make your views known

Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document [in this case XXX]. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

Your submission should be as concise as possible, and should focus on one or more of the criteria listed below that a Legislative Reform Order needs to meet, as set out in section 3 of the Legislative Regulatory Reform Act 2006:

- There are no non-legislative alternatives that will achieve the intended outcome of the provision;
- The effect of the provision is proportionate to the policy objective;
- The provision strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- The provision does not remove any necessary protection;
- The provision does not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- The provision is not constitutionally significant and;
- Where a provision will restate an enactment, it makes the law more accessible or more easily understood.

Contact details for the Scrutiny Committees who scrutinise Legislative Reform Orders can be found at:

[Regulatory Reform Committee](#)

[Delegated Powers and Regulatory Reform Committee](#)

Non-disclosure of responses

Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclose. This applies whether or not you ask for your representation not to be disclosed.

The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Appendix D - Proforma preamble to LRO

This form of preamble was drafted by BIS Legal and has been settled after consultation with Parliamentary Counsel and the legal advisers to the Parliamentary Scrutiny Committees

[Draft/Revised draft Order laid before Parliament under section [14(1)/18(7)] of the Legislative and Regulatory Reform Act 2006 [for approval by resolution of each House of Parliament]]

DRAFT STATUTORY INSTRUMENTS

200[] No.

REGULATORY REFORM

Legislative Reform ([insert title]) Order [year]

Made - - - - ***

Coming into force - - - - ***

The Secretary of State for [name] makes the following Order, in exercise of the powers conferred by section[s] [1/ 2/1 and 2] of the Legislative and Regulatory Reform Act 2006⁽¹⁾.

[He/She makes it also in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽²⁾, for the purposes of which [s]he has been designated ⁽³⁾.]

For the purposes of section [3(1)/3(3)/3(1) and (3)] of the Legislative and Regulatory Reform Act 2006, [s]he considers, where relevant, that the conditions under section 3(2) [and 3(4)] are satisfied.

¹ 2006 c.51; see section 32 for the definition[s] of “Minister of the Crown” [“and regulatory function”]

² 1972 c.68; section 2 and Schedule 2 were amended by the Legislative and Regulatory Reform Act 2006 (c.52), section 27 to 29; see also section 20 to that Act in relation to combination of powers to make a single order.

³ S.I. []

[In accordance with section 11 of that Act, the [National Assembly for Wales/Welsh Ministers] [has/have] agreed to the making of the Order.]

[She/He] has consulted in accordance with section 13(1) [and (2)] of that Act [(save to the extent covered by section 13(3) and (4) of that Act)].

She/He laid a draft Order and an explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the [super-affirmative/affirmative/negative] resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

Super-Affirmative resolution procedure [do not include these words in the preamble]

The period of 60 days referred to in section 18(2) of that Act has expired.

In accordance with section 18(2) of that Act, [s]he has had regard to any representations, resolution and recommendations made during that period and in particular to [name any Parliamentary Report].

[In accordance with section 18(3) of that Act, [s]he has laid a statement before Parliament] OR

[In accordance with section 18(7) of that Act, [s]he has laid a revised draft Order before Parliament together with a statement.]

In accordance with section 18[(4)/(8)] of that Act, the [revised] draft Order has been approved by resolution of each House of Parliament.

Affirmative resolution procedure [do not include these words in the preamble]

In accordance with section 17(2) of that Act, the draft has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Negative resolution procedure [do not include these words in the preamble]

Neither House of Parliament resolved, within the 40-day period referred to in section 16(3) of that Act, that [s]he should not make the Order.

[Note: In relation to a negative resolution Order, if a Parliamentary Committee recommends that the draft Order not be made, but that recommendation is overturned by a resolution of the relevant House, you will require additional wording in the Preamble.]

Appendix E - Explanatory Document

Introductory Recital and Proforma

THE LEGISLATIVE REFORM (insert title of Order) ORDER (insert year)

EXPLANATORY DOCUMENT BY THE (insert name of Department)

INTRODUCTION

This explanatory document is laid before Parliament in accordance with section 14 of the

Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the

Legislative Reform (insert title of Order being made) Order (insert year) (“the draft Order”) which we propose to make under section [1] (or) [2] (or) [sections 1 and 2] [and section 20 of that Act. The purpose of the draft Order is to [amend/repeal/restate] the (insert title of legislation affected)

Template for Explanatory Document

THE LEGISLATIVE REFORM (*insert title of Order*) ORDER (*insert year*)

EXPLANATORY DOCUMENT BY THE (*insert name of Department*)

Introduction

This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (*insert title of Order being made*) Order (*insert year*) (“the draft Order”) which we propose to make under section [1] (*or*) [2] (*or*) [sections 1 and 2] [*and section 20 of that Act*]. The purpose of the draft Order is to [*amend/repeal/restate*] the (*insert title of legislation affected*).

This explanatory document contains information for the Delegated Powers and Regulatory Reform Committee and the Regulatory Reform Committee

Background to the Order

[free text on rationale for LRO]

Power to make order: (*sections 1 or 2; or 1 and 2*) of the 2006 Act

- Power to Remove or Reduce Burdens [For LROs made under section 1 of the Act [Free Text] *Explain what burden the LRO is removing; who is affected by it; how the burden arises from legislation including the relevant legislation, and if any new burdens are being imposed (only permitted in limited circumstances 32-33 explanatory notes).*
- For LROs seeking combination with powers under the European Communities Act 1972 [Free Text] *Provide details of the LRO proposes to combine the order-making power in Part 1 with the power to make orders under s. 2(2) of the European Communities Act 1972 (section 20 of the Act)*
- Power to Promote Regulatory Principles [For LROs made under section 2 of the Act [Free Text] *Explain which regulatory functions will be affected by the proposed LRO. How will the LRO secure the exercise of regulatory functions that comply with the principles of good regulation such that the regulatory activities are carried out in a way which is; transparent; accountable; proportionate; consistent; and targeted only at cases where action is needed*

Compliance with section 3 (2) of the 2006 Act Preconditions

Non Legislative Solutions

[Free Text] Explain the non- legislative options that were considered and why they were ruled out.

Proportionality

[Free text] Explain how the effect of the provision is proportionate to the policy objective

Fair Balance

[Free text] Explain how the provision provides a fair balance between the public interest and the interests of any person adversely affected by it

Necessary Protection

[Free text] Explain why the provision does not remove any necessary protection.

Rights and Freedoms

[Free text] Explain how the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

Constitutional Significance

[Free text] Explain why the measure is not of constitutional significance.

Other Ministerial duties under the 2006 Act

Consultation

[Free text] *Provide brief/full details of the consultation carried out (section 13 of the Act) fuller details can be provided in section 6 below if wished. Include the dates when the consultation took place*

Parliamentary Procedure

[Free text] *State which parliamentary procedure (section 17 of the Act: negative, affirmative or super-affirmative) you will be using and explain why it is suited to the provision.*

European Convention on Human Rights

The [Name of Minister] has made the following statement regarding Human Rights:

[In [my] view the provisions of the [Title of the LRO] are compatible with the Convention rights **OR** Free text]

Compatibility with legal obligations arising from membership of the European Union

[free text]

Territorial Extent

[free text] see sections 9-11 of Act]

Matters of interest to the House of Commons – Territorial Application

[Free text] *Provide details of the territorial extent of the provision and the statutory basis supporting this. Use one of the options below and delete option not used.*

Option A

For: instruments for which the territorial application is limited only to England or only to England and Wales or, in the case of an instrument that is a financial instrument for the purposes of English votes procedures, only to England, Wales and Northern Ireland, use the paragraph options below

This entire instrument applies only to [England, Wales and Northern Ireland OR England and Wales **OR** England].

[Free text]. *Set out details how the territorial application applies*

In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business the subject-matter of this entire instrument would be within the devolved legislative competence of [the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and/or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and/or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales].

OR

In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business the subject-matter of [this instrument OR part[s] of this instrument] would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent in relation to the relevant territory were included in an Act of the relevant devolved legislature.

[Free text].

Option B

For: instruments that do not apply only to England or that do not apply only to England and Wales or, in the case of an instrument that is a financial instrument for the purposes of English votes procedures that does not apply only to England, Wales and Northern Ireland use the paragraph options below.

The territorial application of this instrument [includes Scotland and/OR includes Northern Ireland OR includes Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland OR varies between provisions].

[Free text]. *Set out details how the territorial application applies*

Consultation outcome

[Free text]. *Provide details of the consultation carried out (section 13 of the Act) covering who was consulted; representations received as a result of the consultation and changes (if any) made as a result of these representations unless covered in section 5.1 above.*

Impact

The impact on business, charities or voluntary bodies is [free text] **OR** There is no impact on business, charities or voluntary bodies.

The impact on the public sector is [free text] **OR** There is no impact on the public sector.

An Impact Assessment is submitted with this memorandum and [will be OR is] published alongside the Explanatory Document. **OR** An Impact Assessment has not been prepared for this instrument. *Explain why*

Contact

[Name of contact] at the [Name of department] Telephone: [Direct line telephone number] or email: [email address] can answer any queries regarding the instrument.



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BIS/16/223