

LEGISLATIVE REFORM ORDERS

Quick Start Guide for Policy
Officials

September 2023

Contents

Aim of this guidance	3
What is an LRO?	3
Key features	4
Preconditions and restrictions	4
Devolution	6
Project planning and resources.....	6
Timing	7
Flowchart of the Legislative Reform Order process	8
Proforma for the analysis of potential orders to be made under the Legislative and Regulatory Reform Act 2006.....	9

Aim of this guidance

1. This Quick Start Guide provides a brief overview of the Legislative Reform Order (LRO) process with a flowchart of the LRO process and a pro-forma template. Completing the pro-forma will help you to decide whether or not an LRO is a viable option for your legislative change and if it falls within the vires of the Legislative and Regulatory Reform Act (LRRRA) 2006.
2. The main guidance provides more detail on each of the steps in the process and is designed to support you if you decide to use an LRO to make your legislative change. The content of the pro-forma will also support the drafting of an explanatory memorandum.

What is an LRO?

3. An LRO is a statutory instrument, made under the powers of the LRRRA 2006, which can amend primary legislation¹ independently of a Parliamentary Bill. LROs are used to reduce or remove burdens caused by:
 - financial cost
 - an administrative inconvenience
 - an obstacle to efficiency, productivity or profitability
 - a sanction (criminal or otherwise) which affects the carrying on of any lawful activity
4. LROs can be introduced at any time while Parliament is sitting, but will have to take into consideration any other LROs that are going through Parliament. Parliamentary recess in both Houses and other non-sitting days can present challenges to timetabling and need to be taken into account.
5. LROs are particularly useful for deregulatory changes when no other legislative vehicles are available. The process can be resource intensive with policy, legal and administrative support required throughout the process. Depending on the complexity of the change, the resources required can be similar to that required for a Bill.

¹ An LRO can also be used to amend any retained direct EU legislation.

Key features

6. LROs can repeal, replace, or amend legislation that imposes burdens on any person, including a business, an individual, a voluntary organisation, or a charity. LROs can only impose new burdens if it is the result of the removal or reduction of an existing burden.
7. LROs may reform one or more Acts, and various forms of subordinate legislation, to deal, for example, with cases where a burden stems from overlapping legislation.
8. A Minister can make an LRO to ensure that regulatory functions are exercised in a way that is:
 - transparent
 - accountable
 - proportionate
 - consistent

Preconditions and restrictions

9. Any LRO must meet the following stringent preconditions:
 - 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.

Where a provision will restate an enactment these preconditions do not apply but the provision must make the law more accessible or more easily understood.

10. An LRO cannot:

- remove burdens which fall solely on a Minister of the Crown or government department, unless 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
- provide authorisation for forcible entry, search or seizure or for compelling the giving of evidence unless the LRO repeals provisions to that effect and the new provision is exercisable for similar purposes
- amend or repeal any provision of Part 1 of the LRRA 2006 or the Human Rights Act 1998
- remove burdens arising solely by common law. Common law elements can only be dealt with to the extent of tidying up the boundary of a statutory scheme

Devolution

11. LROs can make provision which would be within the legislative competence of the Welsh Parliament with their agreement.
12. LROs cannot make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of Parliament except under the powers to make consequential, supplementary, incidental or transitional provision.
13. LROs cannot amend or repeal any Northern Ireland legislation except under the powers to make consequential, supplementary, incidental or transitional provision.

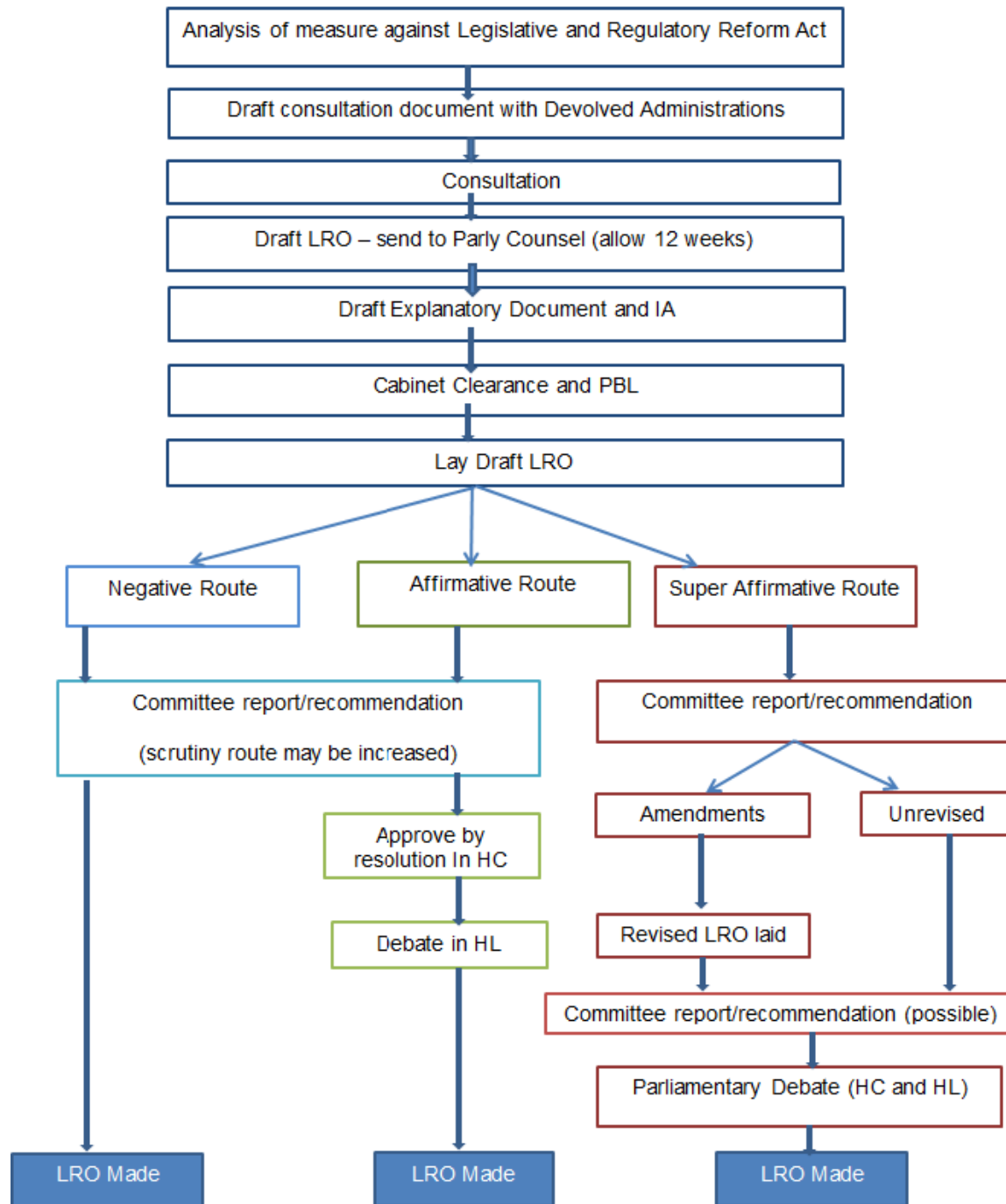
Project planning and resources

14. LROs follow normal policy development process of drafting, evidence gathering, consultation and collective Cabinet Clearance including the Parliamentary Business and Legislation Committee.
15. In Parliament, scrutiny is carried out by the House of Commons Business and Trade Committee and the House of Lords Delegated Powers and Regulatory Reform Committee.
16. There are three potential scrutiny routes (negative, affirmative, or super affirmative which will determine the time, which the Committees have to consider your proposal and the level of scrutiny. After the scrutiny processes (extended for a super affirmative LRO) the committees will vote on the LRO. Either Committee is able to veto an LRO effectively blocking it, though this is very rare.
17. Good legal, policy and economic resources are crucial. Most delays with LROs are caused by difficulties in getting access to these resources. Project management is useful for managing and coordinating work streams particularly around timing. LROs cannot be laid during a recess, and non-sitting days which need to be factored into your project timelines.
18. Once an LRO has completed its passage through the Committees you will need to work with your Parly Branch to have the LRO made by resolution or debated and made.

Timing

19. On average an LRO takes 10 – 14 months from the start of the consultation. Savings in time can be made by clearing the draft LRO if it is ready with the Parliamentary Counsel during the consultation period, as this takes 12 weeks.
20. Consideration of parliamentary recess and non-sitting days needs to be taken into account when calculating time for parliamentary scrutiny. You will also need to keep in mind Common Commencement Dates – April and October for the commencement of your LRO and to publish guidance about the changes (if needed) 12 weeks in advance of your LRO coming into force.

Flowchart of the Legislative Reform Order process



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, 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 need any advice on LROs please contact the Better Regulation 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
- 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
- targeted only at cases where action is needed

Activities should be carried out in a way which is

- transparent
- accountable
- proportionate
- consistent
- 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
- 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 of the Act.

Preconditions and restrictions

The Minister cannot make an LRO under section 1 or section 2 of the Act unless they consider 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
- a body or the holder of an office which you are proposing to create using the order itself
- 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. (Please refer to 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? If so you will need to agree this with the Welsh Parliament. To assess this, consider whether:

- your LRO confers, modifies or removes any function of the Welsh Ministers, First Minister of Wales or Counsel General to the Welsh Parliament
- 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 Welsh Parliament? Does your LRO make provision which is within the legislative competence of any of their functions? If so, agree this with the Welsh Parliament.

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

An LRO cannot make provision which is within the legislative competence of the Scottish Parliament except under the powers to make consequential, supplementary, incidental or transition provision. (See sections 77-79 of the [Explanatory Notes](#) for further guidance).

© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available from: www.gov.uk/