EXPLANATORY STATEMENT

THE LEGISLATIVE REFORM (LOCAL AUTHORITY CONSENT REQUIREMENTS) (ENGLAND AND WALES) ORDER 2008

COMMUNITIES AND LOCAL GOVERNMENT

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9 May 2008

Chapter 1. Introduction

The Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007 was laid before Parliament by the Department for Communities and Local Government ("CLG") on 25 July 2007.

The purpose of the draft Legislative Reform Order ("the Order") is to remove four requirements on local authorities to obtain consent or approval from the Secretary of State or the Welsh Ministers, or in one case, the Attorney General, to the carrying out of certain statutory functions. Specifically, the draft Order would remove requirements for local authorities in England and Wales to obtain consent or approval before taking certain action under the following statutory provisions: the Cancer Act 1939, s4; the Local Government Act 1972, Schedule 14, paragraph 25; the Local Government (Overseas Assistance) Act 1993, s1; and the Education Act 1996, Schedule 1.

Section 15 (1) of the Legislative and Regulatory Reform Act 2006 ("the Act") requires the Minister to make a recommendation as to which of three possible procedures should apply to the making of the Order. Initially it was recommended that the draft Order (which was the first of its kind under section 1 of the Act as well as the first to be drafted by CLG) should proceed under the affirmative resolution procedure, and that the degree of scrutiny required was greater than that available under the negative resolution procedure.

Following the 60 day scrutiny stage (after the Order was laid), both the House of Lords Delegated Powers and Regulatory Reform Committee and the House of Commons Regulatory Reform Committee considered the draft Order and representations were made by both Committees. The reports are summarised in Chapter 2 of this Statement, and amendments have been made to the draft Order as a result. However, these amendments are not substantive and a fresh Full Impact Assessment does not need to be completed.

The House of Lords Delegated Powers and Regulatory Reform Committee considered the draft Order and recommended on 17 October 2007 that it should proceed under the super-affirmative resolution pursuant to section 18 of the Act, instead of under the affirmative procedure The Committee stated in paragraph 4.0 of their First Report of Session 2007/08 of 22 November 2007 that they made this recommendation because they needed to correspond further with the Government about the draft Order and that they considered that they might wish to propose amendments. The Order was debated in Grand Committee of the House of Lords on 13 December 2007. The Committee recommended 2 amendments, one relating to the amendment to the Cancer Act not extending to metropolitan district councils, and the other relating to consent from the National Assembly for Wales in the 3rd recital of the order. Baroness Andrews, on behalf of CLG, accepted the recommendations of the Committee.

The Commons' Committee recommended that the Order was appropriate to be made as drafted, subject to some minor amendments.

Chapter 2. Scrutiny of Delegated Powers and Regulatory Reform Committees

House of Lords.

The House of Lords Delegated Powers and Regulatory Reform Committee, made two substantive recommendations for amendment as summarised in their First Report of Session 2007/08 of 22 November 2007. These are as follows:

I. A recommendation to make changes to the proposed amendments to the Cancer Act 1939 made by Article 2 of the draft Order.

   Article 2 (a) repeals subsection (6) of section 4 of that Act. Section (6) imposes a requirement for certain councils to seek consent of the Attorney General where they bring prosecutions in relation to advertisements made illegal by the Cancer Act 1939. Article 2 (b) goes on to substitute a new subsection (7) into section 4 to update the list of authorities which may bring proceedings under section 4. It was hoped by this Order to extend the power to bring proceedings under section 4 to include metropolitan districts councils, which by an anomaly had not previously been included.

   The Committee noted in paragraph 43 of its report that it may be appropriate as a matter of policy to remove the small anomaly of the provisions not applying to metropolitan district councils.

   However, the Committee did not feel that there is a legal power under the Legislative and Regulatory Reform Act 2006 to do so. Therefore the Committee recommended that the draft Order should be amended so as not to extend the Cancer Act provision to metropolitan district councils.

II. The other recommendation was a change to the recitals in the draft Order where it was felt that the reference to the consent of the National Assembly for Wales required some clarification in technical and legal terms. It is correct that the consent of the National Assembly for Wales was obtained as originally recited in the draft Order. However, the National Assembly for Wales as it was constituted prior to the Government for Wales Act 2006 no longer exists.

The Government of Wales Act 2006 came into force in May 2007 transferring some functions of the National Assembly for Wales as it was constituted prior to that Act to the Welsh Ministers and making related transitional and other provisions.

Baroness Andrews on behalf of CLG accepted the recommendations of the Committee and the amendments made in the re-drafted Order are detailed in Chapter 3.

Since the redrafting of article 2 of the Order amounts to a material change, fresh consent of the Welsh Ministers and the National Assembly for Wales has been sought to the making of the Order. The recital accordingly now reflects the full position.

House of Commons

The House of Commons Regulatory Reform Committee in considering the draft Legislative Reform Order recommended that a draft Order should be proceeded with in terms of the draft subject to certain amendments to footnotes and Explanatory Note. In their view, this did not amount to a material change to the provisions of the draft Order for the purposes of section18 of the Act. These points are summarised in the First Report of Session 2007/08, Drafting Issues, Page 19, paragraph 45 and page 25, Appendix A, letter from Clerk of the Committee to CLG – request for information, 17 October 2007.

CLG accepted the recommendations of the House of Commons Regulatory Reform Committee and these are detailed in Chapter 3.

Chapter 3 Summary of amendments in re-drafted Legislative Reform (Local Authority Consent Requirements) (England & Wales) Order 2008 and Explanatory Note

Amendments to the draft Order and Explanatory Note are set out in the table below

Relevant Section	**Un-amended provision**	**Amended provision**
Preamble (National Assembly for Wales approval)	In accordance with section 11 of that Act, the National Assembly for Wales has agreed to the making of the Order.	Agreement to the making of the Order has been given by the National Assembly for Wales in accordance with section 11 (1) of that Act and by the Welsh Ministers in accordance with Section 11 (2) of that Act (b)
Preamble (in draft Order)	Pursuant to section 15 of that Act, the affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order	Pursuant to section 15 (4) of that Act, the super-affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order
Preamble (in draft Order)	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	After the expiry of the 60 day period mentioned in section 18 of that Act and in accordance with section 18 (7) the Secretary of State laid a revised draft Order and statement before Parliament, and the draft was approved by resolution of each House of Parliament

First column, fourth paragraph of Explanatory Note, page 4	Without the consent of the Secretary of State	Unless it is exercised with the consent of the Secretary of State
Article 2	2. In section 4 of the Cancer Act 1939 (prohibition of certain advertisements) (a) – a) subsection (6) shall be repealed; and b) for subsection (7) there shall be substituted – ‘’(7) each of the following may institute proceedings under this section – a) a county council in England; b) a district council in England for an area without a county council; c) a London borough council d) the common council of the City of London; or e) a county council or county borough council in Wales.’’..	b) a non – metropolitan district council for an area in England for which there is no county council
Footnote – page 1 (a)	(a) 2006 c.51.	(a) 2006 c. 51; sections 1,4,11,13,24 and 27 have been amended by the Government of Wales Act 2006 (Consequential

		Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), Schedule 1, paragraphs 143 to 149.
Footnote page 1 (b)	No footnote	(b) Section 11 as amended by S.I 2007/1388 makes a separate provision for the agreement of the National Assembly for Wales as constituted under the Government of Wales Act 2006 (c.32), and of the Welsh Ministers.
Footnote – page 2 (c)	See section 270 (1) of the Local Government Act 1972 (general provisions as to interpretation) for the definition of ‘’local authority’’	See section 270 (1) of the Local Government Act 1972 (general provisions as to the interpretation) for the definition of ‘’local authority’’, as amended by Schedule 17 to the Local Government Act 1985 (c.51), and section 1(5) of the Local Government (Wales) Act 1994 (c.19).
Footnote – page 2 (e)	(e) 1875 c.55; subsection (4) of section 171 was amended by the Public Health Act 1936 (c. 49), section 346 and Schedule 3, Part 1.	(e) 1875 c 55; section 171 was amended by the Public Health Act 1936 (c.49), section 346 and Schedule 3 Part 1.
Footnote – page 3 (a)	(a) 1993 c.25; section 1 was amended by section 400 of, and paragraph 59 of Part 1 of Schedule 29 to, the Greater London Authority Act 1999 (c.29); paragraph 103 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19); section 93 of,	(a) 1993 c.25; section 1 was amended by paragraph 103 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19); section 93 of, and Part I of Schedule 9 to, the Police and Magistrates’ Courts Act 1994 (c.29); sections 78 and 120 (3) of, and paragraph 36 of

	and Part 1 of Schedule 9 to, the Police and Magistrates' Courts Act 1994 (c.29); section 78 and 120 (3) of, and paragraph 36 of Schedule 10 and Schedule 24 to, the Environment Act 1995 (c.25); and S.I. 2001/3618	Schedule 10 and Schedule 24 to, the Environment Act 1995 (c.25); section 400 of, and paragraph 59 of Part I of Schedule 29 to, the Greater London Authority Act 1999 (c.29); paragraph 83 of Schedule I to the Fire and Rescue Services Act 2004 (c.21); paragraph 10 (3)(c) of Part 1 of Schedule 2 to the Civil Contingencies Act 2004 (c.36); section 209(2) of, and paragraph 50 of Part 2 of Schedule 13 to, the Local Government and Public Involvement in Health Act 2007 (c.28) and S.I..2001/3618.
Footnote – page 3 (b)	(b) 1996 c 56; paragraph 6 of Schedule 1 was amended by paragraph 184 of Schedule 30 to the School Standards and Framework Act 1998) (c.31), S.I. 2002/2953 (in relation to England) and S.I. 2002/3184 (in relation to Wales). The functions of the Secretary of State under paragraph 6 of Schedule 1 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); *see* the entry for the Education Act 1996 in Schedule 1 to that Order. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.	(b) 1996 c. 56); paragraph 6 of Schedule 1 was amended by paragraphs 57 and 184 of Schedule 30 to the School Standards and Framework Act 1998 (c.31), S.I. 2002/2953 (in relation to England) and S.I. 2002/3184 (in relation to Wales). The functions of the Secretary of State under paragraph 6 of Schedule 1 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672); *see* the entry for the Education Act 1996 in Schedule 1 to that Order. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32); certain of those functions were transferred to the Welsh Ministers.