

# Delegated legislation (DL)

**Delegated legislation** – this is when Parliament passes responsibility to another organisation to make laws; this is done by creating a statute called an **Enabling Act**; DL is also known as ‘secondary’ legislation.

The Enabling Act 1933 gives the right to create one of the three types of DL; ensures the lesser body does not step out of the line

## Types of DL

### Orders in Council

- Issued by the Queen and the Privy Council (PC)
- The Civil Contingencies Act (2004) enables them to do so
- Used to interpret EU legislation
- Examples include the Burial Act 1853, the Charities Act 1993, the Northern Ireland Act 1994, the Terrorism (United Nations Measures) Order 2001

### Statutory instruments

- Introduced by the different government departments
- Made by experts in each department (e.g. education experts)
- Examples include the Government of Wales Act 2006, The Firearms Regulations 2019, The Legal Offences (Annual Fees) Order 2019, the Code of Practice under PCEA

### By-laws

(also spelled as bye-laws)

- Introduced by local authorities or public corporations
- Regard a specific area (e.g. Norfolk or Suffolk)
- Examples include rubbish collection, parking, transport, road cleaning

## Why do we need DL?

- We need law made by experts – they create the most effective laws, plus it is impossible for Parliament to have all the knowledge needed to draw up laws.
- We need local knowledge – local authorities know their areas and local problems, as well as it is impossible for Parliament to deal with all local requirements.
- We need detailed law – Parliament doesn't have the time to deal with all the details needed, and details are needed to make society work more efficiently and safely.
- There is also a need for consultation – this is beneficial because assures regulations are technically accurate and workable; consultation is done with bodies, such as the Law Society, the Bar Council, police authorities, representatives etc., e.g. new or revised police Codes of Practice under the Police and Criminal Evidence Act 1984

**Parliament has to make sure that subordinate bodies are not *Ultra Vires*. This means that they mustn't go beyond their powers. Hence, this ensures control over DL.**

## Ways of controlling DL:

### 1. Delegated Powers Scrutiny Committee

- Set up in 1993 in the House of Lords (HofL)
- Considers whether the provisions of any Bills going through Parliament delegate legislative power inappropriately

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- Reports its findings to the HoFL before the Committee stage of the Bill
- Has no power to amend Bills

### **2. Affirmative resolutions**

- Used for statutory instruments only
- This is when a small number of statutory instruments will be subject to affirmative resolutions
- Parliament cannot amend the statutory instrument; it can only approve, annul or withdraw it
- Example: affirmative resolution is required before new or revised police Codes of Practice under the Police and Criminal Evidence Act 1984 came to force

### **3. Negative resolutions**

- Used for statutory instruments
- A minister recommends that a procedure should be used; this procedure will be used unless within 30 days one of the Houses of Parliament (HoP) objects to this
- If the negative resolution procedure is adopted, the DL will not become law until it has been laid before Parliament for 40 days

### **4. Scrutiny Committee**

- Formed in 1973
- Reviews all statutory instruments and (if necessary) draws the attention of both Houses of Parliament to points that need further consolidation
- Grounds for referring a statutory back to the HoP
  - It imposes a tax or charge – this is because only an elected body has such rights
  - It appears to have retrospective effect which was not provided for by the Enabling Act
  - It appears to have gone beyond the powers given under the enabling legislation
  - It makes some unusual or unexpected use of those powers
  - It is unclear or defective in some way
- The review is only a technical one limited to the points set above
- Even if the Committee discovers a breach of one of these points, it cannot alter the regulations or stop them from becoming law
- The committee can only draw the attention of Parliament to the matter

### **5. Questioning government minister**

- Individual ministers may also be questioned by MPs in Parliament on the work of their departments and this can include questions about proposed legislation

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## How do Courts control DL?

### Judicial review

- Can be challenged by the High Court QBD
- Checks whether the DL is ultra vires or unreasonable
- Example: R v Home Secretary ex parte Fire Brigades Union (1995)

### Doctrine of Ultra Vires

- Cannot make reasonable regulations [Strickland v Hayes Borough Council (1896)], levy taxes or allow sub-delegation

### Procedural Ultra Vires

Courts hold that delegated legislation is ultra vires because correct procedure has not been followed

### R v SSEE, ex parte National Union of Teachers (2000)

- High Court Judge ruled that a statutory instrument setting conditions for appraisals and access to higher rates of any pay for readers was beyond the powers given under the Education Act 1996
- Procedure was unfair (only 4 days for consultations)

### Aylesbury Mushroom case (1972)

- Minister of Labour had to consult any organisation appearing to him to be representative of substantial numbers of employers engaging in the activity concerned
- Failed to consult the Mushroom Grower's Association (represents 85% of the total mushroom growers)
- His order was invalid against mushroom growers
- Valid in relation to others affected by the order (e.g. farmers) as the Minister had consulted with the National Farmers Union

## The Legislative and Regulatory Reform Act 2006

- Sets a procedure for making statutory instruments, which are aimed at repealing an existing law in order to remove a 'burden'
  - A 'burden' could be a financial cost, an administrative inconvenience, and obstacle to efficiency/productivity/profitability, a sanction affecting the carrying on of any lawful activity
- Any minister making a statutory instrument under the powers of this Act must consult various people and organisations
- Negative resolutions procedure – the minister recommends that this procedure should be used, it will be used unless both HoF object within 30 days; the procedure will not become law until it has been laid before Parliament for 40 days
- Affirmative resolution procedure – both HoF need to approve the order; a super-affirmative procedure can be used even though the minister has recommended the order
- Super-affirmative resolution procedure - the minister has regards to any representation, any HoF resolutions and any recommendations by a committee asked to report on a draft order of either HoF

## Delegated legislation (DL)

ADVANTAGES	DISADVANTAGES
Saves parliamentary time; Parliament doesn't have time to consider and debate every small detail of complex regulations	Undemocratic – DL takes law making away from the democratically elected House of Commons; DL allows non-elected people to make law; DL limits parliamentary control; DL doesn't relate to by-laws (elected local authorities)
There is access to technical expertise; MPs can't have all the knowledge needed to draw up laws on complex areas => necessary expert consultation	Sub-delegation – law making authority is handed down to another level + ministers merely 'rubberstamp laws'
Allows consultation; regulations must be technically workable; ministers can further consult before regulations are drawn up	Large volume and lack of publicity – makes it difficult to discover what the present law is + DL is made in private unlike parliamentary debates
Allows quick law making; Orders in Council in comparison to Acts of Parliament can be passed very quickly	Difficult wording results in challenges of understanding law and complex regulations
DL is easy to amend; it keeps the law up-to-date; ministers can also respond to new or unforeseen situations by amending regulations made through a statutory instrument (e.g. annual changes of monetary limits)	

END.