



LEGISLATIVE COUNCIL FACT SHEETS

FACT SHEET 31: DELEGATED LEGISLATION

Delegated legislation, or subordinate legislation as it is sometimes called, is legislation made by the executive by authority of an Act of Parliament. It includes statutory rules, by-laws, ordinances, orders in council and various other 'instruments' made by the executive.

By delegating the power to make rules of a technical nature, the Parliament is better able to concentrate on significant matters of policy and principle. However, this brings with it a concomitant need for the Parliament to superintend the exercise by the executive of the delegated legislative power.

Making delegated legislation

The power to make delegated legislation is conferred by a primary Act. For example, a common provision authorising the making of regulations states: 'The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient for carrying out or giving effect to this Act'.

Important requirements concerning the making of delegated legislation are contained in the *Subordinate Legislation Act 1989* and the *Interpretation Act 1989*.

- The *Subordinate Legislation Act 1989* was enacted with the aim of avoiding duplication and inconsistency, allowing adequate opportunities for public consultation and ensuring effective legislative review. It includes requirements to be observed both before and after the making of statutory rules, and provision for the automatic repeal of such rules after a certain time.
- The *Interpretation Act 1987* provides for the publication of 'statutory rules' as defined in the Act and specifies the time at which such rules come into effect

Disallowance of delegated legislation

Many forms of delegated legislation are required to be tabled in each House of Parliament and are subject to disallowance by either House under Part 6 of the *Interpretation Act 1987* or under the provisions of the primary Act:

- Section 41 of the *Interpretation Act 1987* provides that either House may pass a resolution disallowing a statutory rule either before notice of the rule is laid before the House, or at any time after the notice is laid before the House, provided that, in the latter case, notice of the disallowance motion is given within 15 sitting days after the notice was laid before the House. On the passing of a disallowance resolution the statutory rule in question 'shall cease to have effect'.

- Some Acts provide that instruments made under their own provisions must be tabled in Parliament and are subject to disallowance by either House. Certain Acts provide that disallowance is to be in accordance with provisions in Part 6 of the *Interpretation Act 1987*, while in others the disallowance mechanism is set out in the Act itself.

Disallowance procedure

Under standing order 78, a notice of motion for disallowance under section 41 of the Interpretation Act 1987 or any other Act is to be placed on the Notice Paper as business of the House (SO 78(1)). When the item is called on, the House must decide the question, without amendment or debate, whether the matter will be given precedence and proceed as business of the House (and thus have precedence) (SO 78(2)). If the question is agreed to, the House then decides on a motion by the member when the matter will proceed (SO 78(3)), the terms of the motion usually being: 'That the matter proceed forthwith'. If, however, the House decides that the disallowance motion is not to proceed as business of the House, the motion is set down as private members' business outside the order of precedence (SO 78(5)). If this occurs, it is unlikely that the motion will be dealt with for a significant period of time, if at all.

Scrutiny of delegated legislation

The Joint Legislation Review Committee is responsible for the scrutiny of delegated legislation. The functions of the Committee include to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament and to consider whether the Parliament's attention should be drawn to any such regulation on any ground. The grounds on which the Parliament's attention may be drawn to a regulation include that:

- the regulation trespasses unduly on personal rights and liberties;
- the regulation may have an adverse impact on the business community;
- the regulation may not have been within the general objects of the legislation under which it was made;
- the regulation may not accord with the spirit of the legislation under which it was made even though it may have been legally made;
- the objective of the regulation could have been achieved by alternative and more effective means;
- the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- the form or intention of the regulation calls for elucidation;
- any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee is precluded from considering the merits of government policy.

The Committee is empowered to recommend the disallowance of any regulation. However, the Committee has made sparing use of the power to recommend disallowance. It did not recommend the disallowance of any regulation in 2004-2005, 2005-2006, or 2006-2007.