



Types of delegated legislation	
Statutory Instruments	By-Laws
Government Ministers	Local Councils
Made by one of the 15 government departments by the Minister in their area of expertise. Types of Statutory Instruments 1. Ministers given power by an enabling Act to “flesh out” existing legislation. Example: Education Act 1946 (enabling Act) – Minister for Education (enabling body) – School Attendance Regulations (delegated legislation). Recent Examples: Regulations to prevent smoking in cars with children, Regulations to prevent NHS staff being abused by patients. 2. Ministers can amend existing primary legislation under power given to them by the <u>Legislative Regulatory and Reform Act 2006</u> to remove a “burden”.	<ul style="list-style-type: none">Can cover their own areas responding to local needs under powers given to them by the <u>Local Government Act 1972</u>.Usually summary offences heard in the Magistrates’ Court with a punishment of a Fixed Penalty Notice.Examples: traffic restrictions, parking offences, banning alcohol, bicycles in local parks, dogs on beaches.Local Council should publicise and consult on new by-laws through their websites and local press.By-Laws can also be made by big corporations – for example, Transport for London.
Orders in Council	Parliament Orders
Privy Council	Welsh Parliament
<ul style="list-style-type: none">Privy Council is made up of the Queen, Prime Minister and senior members of the government.Orders in Council can be made to:<ul style="list-style-type: none">Give effect to European Directives;Transfer responsibility between government departments;Bring Acts of Parliament into force;Make legislation in times of emergency under powers granted by the <u>Civil Contingencies Act 2004</u>Example: fuel strikes 2001, foot and mouth crisis.Orders in Council can be made quickly and in times of emergency when Parliament are not sitting.	<ul style="list-style-type: none">The secondary law-making powers of the Welsh Parliament are limited now due to increased primary law-making powers.The areas in which Wales can make secondary legislation are now limited to those areas that are “reserved” by the UK Parliament. <p>In the areas where Wales have primary law-making powers, they also therefore have the power to delegate the power to the Welsh Government to create Statutory Instruments and Orders in Council.</p>

Controls on Delegated Legislation

Delegated legislation is often made by unelected officials so it is important that there should be control over the use of the power. This is especially true when considering that this type of legislation far outnumbers the law created annually by UK Parliament and can have far reaching consequences.

Control can be divided into **control exercised by Parliament** (parliamentary controls) and **control by the courts** (judicial controls).

Parliamentary Controls	
Enabling Act	Sets the boundaries within which the delegated legislation is to be made.
Affirmative Resolution	The Statutory Instrument will not become law unless it has been approved by Parliament. Parliament can only approve, annul or withdraw the Instrument.
Negative Resolution	The Statutory Instrument will become law unless it is rejected by the UK Parliament within 40 days.
Scrutiny Committee	This is also known as the Joint Select Committee on Statutory Instruments. The review is a technical one, and it has no power to change Regulations.
Super Affirmative Resolution	This is required for Statutory Instruments made under the <u>Legislative and Regulatory Reform Act 2006</u> and means the UK Parliament must expressly approve it.
Consultation	This is where the Enabling Body has to consult with interested parties who will be affected by the legislation.
Judicial Controls	
If the law has already been passed, then the opportunity for Parliamentary Controls is limited. The only avenue available for claimants who feel they have been subjected to a law that is ultra vires is to apply for a judicial review of the law in the High Court.	
Procedural ultra vires	This is where the procedures laid down in the enabling Act for making the Statutory Instrument have not been followed. <u>Aylesbury Mushroom case</u> – interested parties were not consulted before making the law.
Substantive ultra vires	This is where the delegated legislation goes beyond what Parliament intended. <u>R v Secretary of State for Education ex parte NUT</u> – the Minister went beyond the powers given by the Education Act by changing the pay for teachers.
Unreasonableness	This is where the Regulations made are unreasonable. <u>Strickland v Hayes Borough Council</u> – a by-law restricting singing of obscene songs in private was held to be unreasonable.

Advantages (do we need it?)	Disadvantages (reasons against delegated legislation)
<p>Insufficient Parliamentary Time Parliament does not have time to debate all the laws it needs to.</p> <p>Speed Delegated legislation can be made in times of emergency or to quickly update primary legislation. Full parliamentary debate is not needed.</p> <p>Technicality of the subject matter Statutory instruments are made by government departments who have expertise in the relevant subject matter.</p> <p>Need for local knowledge Local by-laws are better made by a local authority which has knowledge of the needs of the locality.</p> <p>Flexibility They can be made at any time whereas Acts have to be timetabled. In addition, statutes require cumbersome procedures for introducing them and they can only be revoked or amended by another statute. Delegated legislation however can be introduced very quickly as and when it is needed and can also be revoked quickly or amended easily if it proves problematic.</p> <p>Future Needs Delegated legislation can be amended or revoked relatively easily, so that the law can be kept up to date and so that the law can meet future needs that arise such as areas concerning welfare benefits, illustrating a great deal of flexibility in the system. Otherwise statutes can only be amended or revoked by another complicated and time-consuming statute.</p>	<p>Sub-delegation Delegated legislation is sometimes made by people other than those who were given the original power to do so.</p> <p>Lack of Democratic Involvement Delegated legislation is normally made by civil servants rather than the elected politician. There has been increasing concern that delegated legislation was being used to implement important policies.</p> <p>Overuse Critics argue that there is too much delegated legislation. The large volume also gives rise to criticism since it makes it difficult to discover what the present law is. Much delegated legislation is made in private in contrast to the public debate of Parliament.</p> <p>Lack of Control Despite the list of controls over delegated legislation, effective supervision by Parliament and courts is difficult. Affirmative resolution is a stronger control than negative resolution but not all enabling Acts require affirmative resolution. Control by the courts only happens once the delegated legislation has been passed and has started to affect people. It also requires a challenge to be made.</p> <p>Interpretation Finally, delegated legislation shares with Acts of Parliament the same problem of obscure wording that can lead to difficulty in understanding the law.</p>

