

## DELEGATED LEGISLATION

DEFINITION
Law made by some person/body under powers deriving from an Act of Parliament. That statute is known as a “parent” or enabling Act. An example is:

TYPES OF DELEGATED LEGISLATION		
Statutory Instruments are regulations made by Government Ministers and Departments. An example is:	Bye-Laws are made by local authorities to cover matters within their own area. An example is:  They can also be made by certain public corporations and certain companies for matters within their jurisdiction which involve the public. An example is:	Orders in Council are laws made by and with the advice of Her Majesty’s Privy Council and are used, for example, for transferring responsibilities between Government Departments, extending legislation to the Channel Islands, and under the Emergency Powers Act 1920.  An example is the Government controlling fuel supplies during the fuel crisis in 2000.

ADVANTAGES	DISADVANTAGES
Saves Parliamentary time.  Parliament passes the parent Act and those with technical expertise or necessary knowledge can fill in the details.  Government Ministers often consult interested bodies and parties before drafting statutory instruments.  Delegated legislation is more flexible than an Act of Parliament. It can be passed quickly and easily amended or revoked, so that the law is up to date.	It is undemocratic (except for bye-laws).  Sub-delegation occurs whereby law making power is passed on to civil servants by Government Ministers.  There is a large amount of statutory instruments (over 3,000 per year).  Delegated legislation is not well publicised in contrast to debates on Bills in Parliament.  Delegated legislation may be obscurely worded and difficult to understand.

<b>CONTROL OF DELEGATED LEGISLATION</b>			
<b>Parliament</b>		<b>Courts</b>	
<p>The Delegated Powers Scrutiny Committee reports:</p> <ul style="list-style-type: none"> <li>◆ whether the provisions of any Bill inappropriately delegate legislative power, or</li> <li>◆ whether the power is subject to an inappropriate degree of parliamentary scrutiny.</li> </ul> <p>The Committee advises the House of Lords before the Committee Stage of the Bill.</p> <p>How effective is this committee?</p>	<p>If a statutory instrument is subject to the affirmative resolution procedure, it will not become law unless specifically approved by Parliament.</p> <p>Most statutory instruments will be subject to the negative resolution procedure whereby the statutory instrument will become law unless rejected by Parliament within 40 days.</p> <p>Effectiveness? The negative resolution procedure, which is more common, offers less control over statutory instruments.</p>	<p>The Joint Select Committee on Statutory Instruments (the <i>Scrutiny Committee</i>) reviews all statutory instruments and will refer them to Parliament if they:</p> <ul style="list-style-type: none"> <li>◆ go beyond the powers of the enabling Act;</li> <li>◆ reveal an unusual or unexpected use of the powers; or</li> <li>◆ have been drafted defectively or are unclear.</li> </ul> <p>How effective is this committee?</p>	<p>Delegated legislation can be challenged in the High Court QBD through the process of judicial review, on the ground that it is <i>ultra vires</i>, ie, an act that has gone beyond the limits of power granted; or that it is unreasonable.</p> <p>The grounds for judicial review are:</p> <ul style="list-style-type: none"> <li>◆ Procedural <i>ultra vires</i>. An example of this is:</li> <li>◆ Substantive <i>ultra vires</i>. An example of this is:</li> <li>◆ Unreasonableness. An example of this is:</li> </ul>

Notes and activity based upon J. Martin, *AQA Law for AS*, p52-55.