



# Regulatory Reform Act 2001

## 2001 CHAPTER 6

### *Enforcement practice*

#### **9 Codes of practice relating to enforcement of regulatory requirements**

(1) If it appears to the appropriate authority—

- (a) that the effect of the provision made by any enactment is such as to impose, or to authorise or require the imposition of, a restriction, requirement or condition affecting any person, and
- (b) that the practice followed by enforcement officers in relation to the enforcement of the restriction, requirement or condition ought to be improved so far as fairness, transparency and consistency are concerned,

the appropriate authority may issue a code of practice setting out recommended practice in relation to the enforcement of the restriction, requirement or condition.

(2) A code of practice under this section may, in particular, relate to—

- (a) the practice to be adopted by all enforcement officers in enforcing all restrictions, requirements or conditions imposed by specified enactments, or
- (b) the practice to be adopted by enforcement officers of a specified description, or by enforcement officers in specified areas.

(3) Where—

- (a) a court or tribunal finds that a person has failed to comply with a restriction, requirement or condition,
- (b) a code of practice under this section applies in relation to the enforcement of that restriction, requirement or condition, and
- (c) it appears to the court or tribunal that there has been a failure to comply with the code,

the court or tribunal may take the failure to comply with the code into account in deciding how to deal with the failure to comply with the restriction, requirement or condition.

(4) A code of practice under this section may not include any provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament.

(5) In this section and section 10—

““the appropriate authority” means—

- (a) in the case of a code of practice which relates to enforcement action which is a function of the National Assembly for Wales, the Assembly or a Minister of the Crown acting with the agreement of the Assembly, or
- (b) in any other case, a Minister of the Crown;

“enactment” includes an enactment comprised in subordinate legislation but not an enactment comprised in Northern Ireland legislation, as defined by section 24(5) of the Interpretation Act 1978 (c. 30);

“enforcement action”—

- (a) in relation to any restriction, requirement or condition, means any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it, and
- (b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence;

“enforcement officer” does not include—

- (a) the Director of Public Prosecutions,
- (b) the Lord Advocate or a procurator fiscal, or
- (c) the Director of Public Prosecutions for Northern Ireland,

but, subject to that, means any person who is authorised, whether by or under an enactment or otherwise, to take enforcement action;

“licence” includes any authorisation (by whatever name called) to do anything which would otherwise be unlawful.”

## **10 Making of codes of practice by Ministers of the Crown**

(1) Where a Minister of the Crown proposes to issue or revise a code of practice under section 9, he shall prepare a draft of the code (or revised code).

(2) The Minister shall consult about the draft—

- (a) persons appearing to him to be representative of enforcement officers who are authorised to enforce any of the restrictions, requirements or conditions to which the code of practice relates,
- (b) if the draft relates to Wales, the National Assembly for Wales, and
- (c) such other persons as he considers appropriate.

(3) If the Minister determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay a copy of the draft before each House of Parliament.

- (4) If, within the 40-day period, either House resolves not to approve the draft, the Minister shall take no further steps in relation to the proposed code.
- (5) If no such resolution is made within the 40-day period, the Minister shall issue the code (or revised code) in the form of the draft, and it shall come into force on such date as the Minister may by order made by statutory instrument appoint.
- (6) Subsection (4) does not prevent a new draft of a proposed code from being laid before Parliament.
- (7) In this section “40-day period”, in relation to the draft of a proposed code, means—
  - (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and
  - (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) In this section references to a proposed code include references to a proposed revised code.

## **11 Making of codes of practice by National Assembly for Wales**

- (1) Where the National Assembly for Wales proposes to issue or revise a code of practice under section 9, the Assembly shall prepare a draft of the code (or revised code).
- (2) The Assembly shall consult about the draft—
  - (a) persons appearing to the Assembly to be representative of enforcement officers who are authorised to enforce any of the restrictions, requirements or conditions to which the code of practice relates, and
  - (b) such other persons as the Assembly considers appropriate.
- (3) Any code issued by the Assembly shall come into force on such day as the Assembly may by order made by statutory instrument appoint.