

# REGULATORY REFORM ACT 2001

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 9: Codes relating to enforcement of regulatory requirements*

106. *Subsection (1)* confers a power to make codes of practice relating to enforcement of regulatory requirements. Subsection (1)(a) outlines the first element of the context within which the power is intended to operate: the identification of statutory requirements that are enforced. Use of the terms “restriction”, “requirement” and “condition” is explained at paragraph 62 above.
107. Paragraph (1)(b) outlines the second precondition that must be met before the power can be exercised. In forming its view that the enforcement officers’ practice “ought to be improved”, the appropriate authority (as defined at subsection (5)) might take into account factors such as the take-up and compliance with the Enforcement Concordat and the extent and merit of business dissatisfaction with current enforcement practice. It will be a matter of judgement by the appropriate authority whether the current practice “ought to be improved”. That view will be tested by consultation, which is provided for in section 10.
108. The remainder of subsection (1) provides that, if these two preconditions are met, the appropriate authority may issue a code of practice setting out recommended enforcement practice. A code of practice would be likely to contain elements based on, but not identical to, the existing Enforcement Concordat.
109. *Subsection (2)* sets out two different but not exclusive approaches for framing a code. The aim is to allow a code to be tailored to the enforcement problems that are driving Ministers to exercise the power. Subsection (2)(a) provides that a code could apply to all enforcement officers enforcing a particular legal requirement. For example, it could apply to any enforcement officer enforcing the law on health and safety at work. If this approach were to be followed, the code would include a list of the legislation to which it applied. The alternative approach, at subsection (2)(b), is for a code to apply more specifically to enforcers of a particular description, or to enforcers in specified areas. For example, a code could be applied to all trading standards officers or to all environmental health officers, or to all such officers in a particular geographical area.
110. *Subsection (3)* deals with the effect of any code. The first stage, at subsection (3)(a), is for a court or tribunal to have found that a defendant is guilty of a breach of a restriction, requirement or condition. The second stage is to determine whether there is a relevant code of practice (as detailed at subsection (3)(b)). If so, the court or tribunal may form a view whether enforcement officers failed to comply with the code (as detailed at subsection (3)(c)). Once these three steps have been completed, the court or tribunal may take into account that failure in deciding how to deal with the regulatory breach. The court would not take compliance with the code into account in determining whether or not a regulatory breach had occurred. The way in which the court or tribunal may take non-compliance with the code into account might be when considering the appropriate penalty for an offence or in considering awards of costs. This approach means that the

*These notes refer to the Regulatory Reform Act 2001  
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code is not directly binding on enforcement bodies and there is no direct penalty on the enforcement authority for non-compliance.

111. The effect of *subsection (4)* is to limit application of any code in Scotland to those matters that have been reserved to the UK Parliament.
112. *Subsection (5)* defines several terms. The “appropriate authority” exercising the power will normally be a UK Minister at Westminster (expected to be the Minister for the Cabinet Office). However, in the case of a code that relates to an enforcement function of the National Assembly of Wales, such as the control of animal health and welfare in Wales, the Assembly is given the power to set out a code. A UK Minister at Westminster could also exercise the power in respect of these functions but only with the consent of the Assembly. This provides a mechanism by which a single code embracing enforcement in both England and Wales could be applied if considered appropriate. For example, one code could apply to all farm inspectors in England and Wales, assuming that there is consensus between the UK Government and the Assembly.
113. The definition of “enactment” does not affect the meaning of this term in sections 1-8. Its effect is that the subject of any code may be subordinate legislation as well as restrictions, requirements and conditions imposed directly by primary legislation.
114. The effect of the definition of “enforcement officer” is the same as that in section 5(6) of the 1994 Act.