

# LEGISLATIVE AND REGULATORY REFORM ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Regulators**

#### **Exercise of regulatory functions**

##### *Section 21: Principles*

114. This section sets out principles to which a person must have regard when exercising certain regulatory functions (as defined in section 32). The principles listed are the Better Regulation Commission's Principles of Good Regulation, and provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent, and should be targeted only at cases in which action is needed.
115. The duty to have regard to these principles is subject to any other legal requirement, such as a statutory duty or a requirement of EC law, which will take priority over the duty to have regard to the principles: subsection (3).
116. The regulatory functions to which the duty in the section applies are those specified in an order made under the powers in section 24. Those powers are flexible enough to permit an order to specify some regulatory functions of a particular body but not others, if it is considered appropriate for the duty to have regard to the principles to apply in relation to some but not all of its regulatory functions.

##### *Section 22: Code of Practice*

117. This section enables a Minister of the Crown to issue and revise a Code of Practice relating to the exercise of regulatory functions.
118. Under subsection (2) any person exercising a regulatory function to which the section applies must have regard to the Code when determining general policies or principles by reference to which that person exercises those functions. So the duty to have regard to the Code in subsection (2) does not apply when the regulatory function itself is exercised.
119. However, under subsection (3), where a person exercises a regulatory function of setting standards or giving general guidance about the exercise of other regulatory functions (whether his own or someone else's regulatory functions), the duty to have regard to the Code applies directly to the exercise of that function of setting standards or giving general guidance. In this case, the duty under subsection (2) does not apply.
120. The duties to have regard to the Code in subsections (2) and (3) are subject to any other legal requirement affecting the exercise of the regulatory function: subsection (4).

121. The functions to which the section applies are those specified by order under section 24. An order under section 24 can specify some of the regulatory functions of a particular body, if it was thought appropriate for the duty to have regard to the Code to apply in relation to some but not all of its functions.

***Section 23: Code of Practice: procedure***

122. This section sets out the procedure which the Minister must follow when he proposes to issue or revise a Code of Practice.
123. Subsection (2) requires the Minister, when preparing the draft Code, to seek to secure that it is consistent with the principles set out in section 21. This is to avoid discrepancies between the principles and the Code, which could cause difficulties for regulators who are under a duty to have regard to both.
124. The Minister must consult the persons listed in subsection (3) about the draft Code. The draft Code must be laid before Parliament and can be issued by the Minister if it is approved by a resolution of each House of Parliament. While the Code is not itself a statutory instrument, it must be brought into force by a statutory instrument as set out in subsection (6). (The statutory instrument is not subject to any procedural requirements.)

***Section 24: Functions to which sections 21 and 22 apply***

125. This section makes provision for orders to specify the regulatory functions to which the duties in sections 21 and 22 apply.
126. Under subsection (2) a Minister of the Crown can specify functions, subject to subsections (3) and (5).
127. Subsection (3) places restrictions on the extent to which orders can specify regulatory functions exercisable in Scotland, Northern Ireland or Wales. The power to specify a function exercisable only in or as regards to Wales is given exclusively to the National Assembly for Wales, subject to subsection (5).
128. By virtue of subsection (5), an order under this section cannot specify the regulatory functions of the Gas and Electricity Markets Authority (Ofgem), the Office of Communications (Ofcom), the Office of Rail Regulation (ORR), the Postal Services Commission (PostComm), or the Water Services Regulation Authority (Ofwat).
129. The authority making an order under this section (whether that authority is a Minister of the Crown or the Assembly) must consult in accordance with subsection (6).
130. Subsection (7) provides that different provision can be made for different purposes, which will enable an order made under this section to specify a regulatory function for the purpose of section 21 but not section 22, and vice versa.
131. Under subsection (9) a Minister of the Crown may not make an order unless a statutory instrument containing it is laid in draft before, and approved by resolution of, each House of Parliament. (This provision does not apply where an order is made by the Assembly, rather than a Minister.)