

These notes refer to the Regulatory Enforcement and Sanctions Act 2008 (c.13) which received Royal Assent on 21 July 2008

REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Regulatory Enforcement and Sanctions Act which received Royal Assent on 21st July 2008 (the Act). They have been prepared by the Department for Business, Enterprise, and Regulatory Reform in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

Summary and Background

3. The Regulatory Enforcement and Sanctions Act will primarily implement the key recommendations contained in the following reports and papers:
 - The Hampton Review, *Reducing Administrative Burdens: Effective Inspection and Enforcement*, published in March 2005 (“the Hampton Review”);
 - The Macrory Review, *Regulatory Justice: Making Sanctions Effective*, published in November 2006 (“the Macrory Review”); and
 - The Government paper *Next Steps on Regulatory Reform*, published in July 2007.
4. The Hampton Review set out a vision for a risk-based approach to regulation and included a set of principles for regulatory inspection and enforcement, based around risk and proportionality, as well as a major streamlining of regulatory structures. The Government has committed to implementing the Hampton Review agenda and this Act is a further element in delivering on that commitment. The Government’s intention to legislate in this area was heralded in the 2005 Pre-Budget Report.
5. The Act comprises four key parts: Part 1 provides for the establishment of a statutory corporation known as the Local Better Regulation Office (“LBRO”) and makes provision about its objectives and functions; Part 2 makes provision for more consistent and co-ordinated regulatory enforcement by local authorities; Part 3 provides for the introduction of a new expanded framework for regulatory sanctions by enabling Ministers to confer new civil sanctioning powers on regulators in relation to specific offences; and Part 4 provides for the introduction of a duty on regulators not to impose or maintain unnecessary burdens.
6. The Hampton Review found that the diffuse structure of local authority regulatory enforcement increases uncertainty and administrative burdens for business. Unco-ordinated action means that businesses receive unnecessary inspections and conflicting advice, while a lack of communication amongst local authorities results in duplication of effort. Part 1 intends to address these issues by establishing LBRO with the objective

of securing that local authorities exercise their relevant functions in a manner that is effective, does not give rise to unnecessary burdens and that complies with the Better Regulation Commission's Principles of Good Regulation. Those principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, and consistent and should be targeted only at cases in which action is needed. Part 2 and Schedule 4 of the Act promote co-ordination amongst local authorities by making provision regarding communication between local authorities and conflict resolution by LBRO.

7. The Macrory Review made recommendations aimed at ensuring that regulators have access to a flexible set of sanctioning tools that are consistent with the risk-based approach to enforcement outlined in the Hampton Review. Currently, many regulators are heavily reliant on criminal prosecution as the main sanction should industry or individuals fail to comply with regulatory requirements. Professor Macrory's recommendations included that:
 - The Government should consider empowering regulators to apply fixed and variable monetary penalties where there has been a regulatory breach;
 - The Government should consider improving current statutory notice regimes and extending them to those regulators that do not currently have them; and
 - The Government should consider introducing enforceable undertakings as an alternative to criminal prosecution whereby the person in breach enters into a legally binding agreement with the regulator to carry out specific activities to rectify its non-compliance.
8. **Part 3** of the Act responds to the Macrory Review recommendations by enabling Ministers to confer on regulators sanctioning powers as follows:
 - Fixed monetary penalties – it is envisaged that such fines will be imposed by a regulator in respect of low-level instances of non-compliance;
 - Discretionary requirements which include:
 - Variable monetary penalties – requiring a person to pay a monetary penalty the value of which will be determined by the regulator;
 - Compliance notices – requiring a non-compliant business to undertake certain actions to bring themselves back into compliance; and
 - Restoration notices – requiring a person to undertake certain actions to restore the position, as far as possible, to the way it would have been had regulatory non-compliance not occurred.
 - Stop notices – requiring a person to cease an activity that is causing serious harm or presents a significant risk of causing serious harm and has given rise, or is likely to give rise to regulatory non-compliance; and
 - Enforcement undertakings – an agreement offered by a person to a regulator to take specific actions related to what the regulator suspects to be an offence.
9. The sanctioning powers may be conferred by Ministers in respect of particular criminal offences on specified regulators or those who enforce offences contained in any enactment listed in Schedule 6 and those who enforce offences in secondary legislation made under enactments listed in Schedule 7. The Act sets out some minimum requirements for implementation of the new sanctions.
10. **Part 4** creates a duty that requires regulators to review their functions, not to impose unnecessary burdens, and unless disproportionate or impracticable, to remove burdens that are found to be unnecessary. Regulators that are subject to the duty must report on

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progress annually. The duty applies to five regulators listed in section 73. Ministers can apply the duty to other regulatory functions by order.

11. [Part 5](#) of the Act contains supplemental and general provisions.