

REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Local Better Regulation Office

Establishment of LBRO

Section 1: LBRO

19. [Section 1](#) establishes the corporate body to be known as the LBRO.
20. Subsection (3) gives effect to Schedule 1, which makes further provision about LBRO's constitution as well as other matters relating to its proceedings, accounts etc.

Section 2: Dissolution of the LBRO company

21. There is a non-departmental public body named the Local Better Regulation Office (the "LBRO company"), constituted as a private company limited by guarantee. When Part 1 comes into force, section 2 will effect the dissolution of the LBRO company, and the transfer of the functions, staff and property of the LBRO company to a new statutory corporation. Subsection (3) gives effect to Schedule 2, which provides for the automatic transfer of staff, property, rights, and liabilities from the LBRO company to LBRO. The transfers of property and staff take place immediately before the dissolution of the LBRO company.
22. [Paragraphs 1 and 2](#) of Schedule 2 provide that the transfer of staff, property, rights and liabilities from the LBRO company to LBRO should be treated as if it were a transfer of an undertaking to which the Transfer of Undertakings (Protection and Employment) Regulations 2006 (TUPE) apply. [Paragraphs 4 to 6](#) ensure continuity, so that things done by the LBRO company immediately before it is dissolved have effect as if done by LBRO. For example, if the LBRO company were to initiate a consultation with persons who are affected by a particular type of trading standards regulations with a view to improving the effectiveness of enforcement, the consultation would be deemed to have satisfied the requirements of section 6(4), which requires LBRO to consult before giving guidance to local authorities.

Definitions

Section 3: "Local Authority"

23. [Section 3](#) defines "local authority" for the purposes of Part 1 of the Act.

Section 4: "Relevant function"

24. [Section 4](#) defines "relevant function" for the purposes of Part 1 of the Act by reference to the list of enactments at Schedule 3, the instruments made under those enactments,

and the enactments made under section 2(2) of the European Communities Act 1972 that relate to the matters listed in subsection (3), being:

- a) Agricultural produce (quality standards and labelling);
 - b) Animal health and welfare;
 - c) Animal feed;
 - d) Consumer protection;
 - e) Environmental protection;
 - f) Food hygiene and standards;
 - g) Public health and safety;
 - h) Weights and measures (including measuring instruments).
25. Subsection (4) enables the Secretary of State to amend the list of enactments in Schedule 3 and the list of matters in subsection (3), subject to affirmative resolution procedure in Parliament (see section 20). Under subsection (6), where such amendments include matters which are Welsh ministerial matters, this will be subject to the consent of the Welsh Ministers.
26. Under subsection (7), the Secretary of State may, by order, determine whether an enactment made under section 2(2) of the European Communities Act 1972 is made with respect to any of the matters listed in subsection (3). Under subsection (8) the Welsh Ministers must consent to any order made under subsection (7).

General functions of LBRO

Section 5: Objective relating to general functions

27. **Section 5** sets out LBRO's objective. This is that LBRO must, when carrying out its general functions under section 6 to 10, seek to secure that local authorities exercise their relevant functions effectively, in a way that does not give rise to unnecessary burdens and in a way which conforms to the principles set out in subsection (2). These principles are the Better Regulation Commission's Principles of Good Regulation.

Section 6: Guidance to local authorities

28. Under section 6, LBRO has the function of giving guidance to local authorities as to how they should exercise their relevant functions. Guidance issued under section 6 may be given to one or more local authorities and may relate to one or more relevant functions. This means that LBRO could, for example, give guidance to a single local authority about how often it should be carrying out inspections of premises of a certain type, or more general guidance relevant to all authorities on how to enforce specific pieces of legislation, or in respect of areas of regulation.
29. LBRO may also issue guidance relating to the way in which a local authority exercises its functions in a particular case. This means that LBRO could, for example, issue guidance to a local authority about the way in which it is enforcing trading standards rules in respect of a particular business. Local authorities are required to have regard to guidance issued by LBRO under this section. Under subsection (6), LBRO may vary or revoke any guidance issued under this section by issuing further guidance under this section.
30. Before giving guidance, LBRO must consult: those persons whose activities are regulated by the exercise of the function, or persons representative of such persons (businesses and trade associations for example); local authorities in England and Wales, or such persons representative of local authorities in England and Wales (for example,

the Local Government Association and LACORS (Local Authority Co-ordinators of Regulatory Services) as LBRO considers appropriate. LBRO must also consult any other persons it considers appropriate. These are likely to include businesses and other bodies that are subject to regulation, any relevant regulators, and relevant representative bodies such as the Trading Standards Institute or the Chartered Institute of Environmental Health.

Section 7: Guidance to local authorities: enforcement

31. **Section 7** allows LBRO to give directions to a local authority to comply with any guidance that has been issued by it under section 6, or guidance issued by another body (such as a national regulator), which relates to the exercise of a relevant function.
32. Before issuing a direction under section 7, LBRO must consult the local authorities to whom the direction is being given; any relevant regulator; and any other persons that LBRO considers appropriate. Subsection (6) defines a relevant regulator as ‘a person (other than a local authority in England and Wales) with regulatory functions which relate to the matter to which the direction relates’.
33. Subsection (2) requires LBRO to obtain the consent of the Secretary of State before issuing any direction under this section. Any such direction to one or more local authorities in Wales in relation to a Welsh ministerial function is subject to the consent of the Welsh Ministers. Where LBRO issues a direction to two or more local authorities in England and Wales, consent by the Secretary of State or Welsh Ministers must be made by order, subject to the negative resolution procedure (see section 20(2)).
34. Subsection (7) requires LBRO to publish any directions that it issues under this section. Under subsection (8) LBRO may vary or revoke any guidance issued under this section by issuing further guidance under this section.

Section 8: Financial support and assistance to local authorities

35. **Section 8** allows LBRO to provide financial support to local authorities in relation to the exercise of their relevant functions and to any other person for the purpose of assisting local authorities in the exercise of their relevant functions. It is expected that LBRO will use this function to support and promote best practice by local authority regulatory services.

Section 9: Advice to Ministers of the Crown

36. Under subsection (1) LBRO can provide advice or make proposals to a Minister of the Crown in respect of the following matters: the way that local authorities exercise their relevant functions; the effectiveness of legislation or proposed legislation relating to the exercise of those functions; whether it would be appropriate for any other regulatory functions to be exercised by local authorities; and any other matter that relates to the way in which local authorities exercise their relevant functions. If a Minister requests advice or proposals on these matters from LBRO, then LBRO is obliged to provide such advice or make such proposals.

Section 10: Advice to Welsh Ministers

37. **Section 10** confers an equivalent power and equivalent requirements on LBRO to those in section 9 with regard to advising Welsh Ministers in relation to Welsh ministerial matters.

Function relating to enforcement priorities

Section 11: Enforcement priorities

38. Subsections (1) and (2) require LBRO to prepare and publish a list specifying the matters in relation to which local authorities in England or Wales should give priority when allocating resources. In essence, LBRO is required to review and revise the list of national enforcement priorities for local authority regulatory service published in the Rogers Review in March 2007. Examples of the matters which LBRO might include in its list of priorities might be: (i) air quality and the regulation of pollution from factories and homes; (ii) alcohol, entertainment and enforcement of late night licensing; and (iii) trade description, trade marking and doorstep selling. Local authorities in England or Wales are required to have regard to the list of priorities when deciding what level of resources to allocate to which relevant function.
39. Subsections (3) and (4) require that LBRO should consult such persons as it considers appropriate before publishing the list and that it should publish details of any representations made to it as a result of consultation undertaken prior to publishing the list.
40. Subsection (5) requires LBRO to secure the consent of the Secretary of State before publishing a list of those matters to which local authorities in England should give priority. Subsection (6) requires LBRO to consult the Secretary of State and secure the consent of the Welsh Ministers before publishing a list of those matters to which local authorities in Wales should give priority.
41. Under subsection (7), LBRO must review the list published under this section from time to time, or if requested to do so by the Secretary of State, or in the case of a list specifying matters to which Welsh local authorities should give priority, if requested to do so by Welsh Ministers.

Matters relating to the exercise of LBRO's functions

Section 12: Relationship with other regulators

42. **Section 12** requires LBRO and five named regulators to enter into memoranda of understanding with each other as a basis for co-operation and co-ordinating their work together. Subsection (2) lists the regulators with whom LBRO must enter into a memorandum of understanding, namely: the Environment Agency, the Food Standards Agency, the Gambling Commission, the Health and Safety Executive, and the Office of Fair Trading. It is deemed particularly important that LBRO enter into memoranda of understanding with these five regulators as they all have functions that overlap with areas in which LBRO has functions.

Section 13: Duty not to impose burdens etc

43. Subsection (1) requires LBRO to secure that the exercise of its functions does not impose burdens, which are unnecessary or maintain burdens that have become unnecessary. Subsection (2) specifies that unnecessary burdens need not be removed where to do so would be impracticable or disproportionate.
44. Subsection (3) requires LBRO to secure that it exercises its functions in a way that is transparent, accountable, proportionate, and consistent, and that it targets its activities only at cases where action is needed. These are the Better Regulation Commission's Principles of Good Regulation.

Section 14: Ancillary powers

45. **Section 14** confers on LBRO the power to do anything that it thinks necessary or expedient for the purpose of, or in connection with, the exercise of its functions.

Ministerial powers in relation to LBRO

Section 15: Guidance or directions by the Secretary of State

46. Subsection (1) confers on the Secretary of State the power to give LBRO guidance or directions as to the exercise of its functions. Subsection (4) requires LBRO to have regard to the guidance and to comply with any directions made under this section.
47. Before giving guidance or directions, the Secretary of State must consult LBRO and such other persons as are likely to be affected by the guidance or directions, or persons representative of such persons. Guidance or directions must be published and a copy laid before Parliament.
48. Subsection (7) prohibits the Secretary of State from issuing a direction to LBRO requiring it to direct two or more local authorities to comply with guidance it has given under section 6 or guidance issued by another national body (such as a national regulator).

Section 16: Guidance or directions by Welsh Ministers

49. **Section 16** creates an equivalent power to that set out in section 15 for Welsh Ministers in relation to Welsh ministerial matters. Under subsection (3), a copy of the guidance or directions must be laid before the National Assembly for Wales.

Supplementary and general

Section 17: Review of LBRO

50. **Section 17** requires the Secretary of State to review LBRO's discharge of its functions as soon as is practicable after the end of the period of three years beginning on the day on which this section enters into force.
51. Subsection (3) requires that the review consider whether LBRO is discharging its functions effectively and efficiently and the extent to which, in discharging its functions in sections 6 to 10, it has achieved the objective in section 5.
52. The Secretary of State must, in conducting a review under this section, consult with the Welsh Ministers and such other persons as he considers to be appropriate.
53. Under subsection (5), the Secretary of State must publish the results of any review carried out under this section. Under subsection (6) the Secretary of State must lay a copy of any review carried out under this section before Parliament and the National Assembly for Wales.

Section 18: Power to dissolve LBRO

54. **Section 18** confers on the Secretary of State a power to provide for the dissolution of LBRO. The section specifies that the order may, among other things, provide for the transfer of functions, property, rights, or liabilities of LBRO to another person.
55. It is intended that LBRO will be dissolved when it is deemed to have achieved its objective. Before making an order to this effect the Secretary of State must consult, the Welsh Ministers and such persons as will be substantially affected by the dissolution of LBRO. An order under this section, in order to provide for the dissolution of LBRO, may repeal, revoke, or amend any enactment.

Section 19: Dissolution of LBRO: tax

56. **Section 19** confers on the Treasury a power to make regulations varying the way in which income tax, corporate tax, capital gains tax, stamp duty or stamp duty reserve tax

has effect when an order made under section 18 makes provision regarding the transfer of the property, rights or liabilities of LBRO to another person.

Section 20: Orders under Part 1

57. **Section 20** specifies that an order or regulation made under Part 1 must be made by statutory instrument.
58. Where an order is made under sections 4(7), 7(4) or 15(7), the order will be subject to the negative resolution procedure. A statutory instrument containing regulations made by the Treasury under section 19 is also subject to the negative resolution procedure.
59. Where an order is made under sections 4(4) or 18, the order will be subject to the affirmative resolution procedure.
60. Where an order is made under sections 7(4) or 16(7) by the Welsh Ministers, the order will be subject to the negative resolution procedure of the National Assembly for Wales.