

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – the Regulatory Objectives Etc.

Section 4 – Ministerial oversight

18. **Section 4** provides that the Scottish Ministers, in relation to their functions under this Act (except in sections 141(c) and 145(1)), must, as far as practicable, act in a way which is compatible with the regulatory objectives and which they consider most appropriate with a view to meeting those objectives. The phrase “so far as is practicable” is added because it is recognised that the duties are broad and compliance may not be able to be objectively measured. In particular, there may be tensions between objectives, and a reasonable balance will need to be struck between them.
19. The Scottish Ministers must also have regard to the principles of best regulatory practice under which (in particular) regulatory activities should be carried out effectively and in a way that is transparent, accountable, proportionate, consistent, and targeted. These are the “five principles of good regulation” first laid out in a report by the UK Better Regulation Task Force in 2005¹. These guidelines state that regulation should be:
 - proportionate: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised;
 - accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
 - consistent: government rules and standards must be joined-up and implemented fairly;
 - transparent: regulators should be open, and keep regulations simple and user friendly; and
 - targeted: regulators should be focused on the problem, and minimise side effects.

¹ “Regulation – More is Less. Reducing Burdens, Improving Outcomes”, Annex B to the Report, March 2005.