

# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 1

#### REGULATORY FUNCTIONS

*Regulations to encourage or improve regulatory consistency*

#### **1 Power as respects consistency in regulatory functions**

- (1) The Scottish Ministers may by regulations make any provision which they consider will encourage or improve consistency in the exercise by regulators of regulatory functions.
- (2) Regulations under subsection (1)—
  - (a) must specify the regulators to which they apply,
  - (b) may specify regulatory functions in respect of which they are, or are not, to apply,
  - (c) may prescribe the forms, procedure or other arrangements in respect of which a regulator is to impose, set, secure compliance with or enforce a regulatory requirement (including the manner in which and extent to which fees may be charged or costs recovered),
  - (d) may require a regulator to co-operate, or co-ordinate activity, with other regulators or the Scottish Ministers (including providing information to the Scottish Ministers).
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) the regulators to which the regulations would apply,
  - (b) such persons or bodies as appear to the Scottish Ministers to represent the interests of persons substantially affected by the proposed regulations,
  - (c) such other persons or bodies as the Scottish Ministers consider appropriate.
- (4) For the purposes of subsection (1), “consistency” includes consistency—
  - (a) in the way in which particular regulators, their employees or their agents impose, set, secure compliance with or enforce a regulatory requirement,

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- (b) in the way in which different regulators, or the employees or agents of different regulators, impose, set, secure compliance with or enforce a regulatory requirement.

(5) In this Part—

“regulator” means a person, body or office-holder listed, or of a description listed, in schedule 1,

“regulatory functions” means—

(a) functions conferred by or under any enactment of—

(i) imposing requirements, restrictions or conditions in relation to an activity,

(ii) setting standards or outcomes in relation to an activity, or

(iii) giving guidance in relation to an activity, or

(b) functions which relate to the securing of compliance with, or enforcement of, requirements, restrictions, conditions, standards, outcomes or guidance which by or under any enactment relate to an activity,

but does not include any such functions exercisable by a planning authority,

“regulatory requirement” means a requirement, restriction, condition, standard or outcome (whether contained in guidance or otherwise)—

(a) which is to be complied with, met, attained or achieved by a person, body or office-holder whether by or under an enactment (including this Act) or otherwise, and

(b) in respect of which a regulator has regulatory functions.

(6) In the definition of “regulatory functions” in subsection (5), “activity” includes—

(a) providing goods and services, and

(b) employing or offering employment to any person.

## **2 Regulations under section 1: further provision**

(1) Regulations under section 1 (“the regulations”) may include provision requiring a regulator—

(a) to secure compliance with or enforce an existing regulatory requirement,

(b) to impose, set, secure compliance with or enforce any other regulatory requirement which the regulator proposes to, or may, impose or set.

(2) Subject to subsection (3), the regulations may also include provision—

(a) amending a regulatory requirement,

(b) for a regulatory requirement to cease to have effect (by means of repealing or revoking an enactment containing the requirement or otherwise),

(c) creating a regulatory requirement,

(d) requiring a regulator to create, amend or remove a regulatory requirement,

(e) where a regulator is required to act as mentioned in paragraph (d), imposing conditions in relation to that requirement.

(3) The regulations may not include provision that would—

(a) amend a regulatory requirement which, by or under an enactment (a “mandatory enactment”)—

(i) must be complied with, met, attained or achieved, and

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- (ii) a regulator is required to impose or set,
  - (b) repeal or revoke a mandatory enactment.
- (4) But the regulations may include provision such as is mentioned in subsection (3) if the regulations otherwise make provision having an equivalent effect to the mandatory enactment.
- (5) A provision in the regulations requiring a regulator to impose or set a regulatory requirement is not a mandatory enactment for the purposes of subsection (3) (unless such provision is included by virtue of subsection (4)).
- (6) Where the regulations include provision such as is mentioned in subsection (2), they may also include provision preventing a regulator from imposing or setting a regulatory requirement—
  - (a) that amends, replaces or revokes a regulatory requirement amended or created by the regulations,
  - (b) that has an equivalent effect to a regulatory requirement which ceases to have effect by virtue of the regulations.
- (7) Where the regulations make provision that would (but for this subsection) apply to a regulator, the Scottish Ministers may, if they consider it necessary or expedient, direct that, for a period no longer than that mentioned in subsection (8)—
  - (a) the provision is not to apply to the regulator, or
  - (b) the provision is to apply to the regulator—
    - (i) with such modifications as may be specified in the direction,
    - (ii) subject to such conditions as may be so specified.
- (8) The period is that beginning with the day on which the direction is given and ending 6 months later.
- (9) The Scottish Ministers must publish (in such manner as they consider appropriate) any direction given under subsection (7).
- (10) Where the regulations include provision such as is mentioned in subsection (1)(b), such provision does not affect any requirement for the regulator to consult before imposing or setting the regulatory requirement mentioned in that subsection.
- (11) This section is without prejudice to the generality of the power to make regulations under section 1.