



# 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.

### *Compliance and enforcement*

## **3 Regulations under section 1: compliance and enforcement**

- (1) A regulator to which regulations under section 1 apply must comply with the regulations except to the extent that—
  - (a) the regulator lacks the powers necessary to comply, or
  - (b) the regulations impose on the regulator a requirement that conflicts with any other obligation imposed on the regulator by or under an enactment.
- (2) Where a regulator fails to comply with the regulations, the Scottish Ministers may—
  - (a) declare the regulator to have so failed, and

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- (b) direct the regulator to take such steps to remedy the failure as are specified in the direction within such reasonable period as may be so specified.
- (3) Where a regulator fails to take some or all of the steps specified in a direction under subsection (2)(b), the Scottish Ministers may—
  - (a) take the steps,
  - (b) arrange for any other person to take the steps, or
  - (c) apply to the Court of Session for an order requiring the regulator to take the steps.
- (4) The Scottish Ministers may recover from a regulator the costs incurred by the Scottish Ministers in relation to—
  - (a) taking steps under paragraph (a) of subsection (3),
  - (b) arranging for another person to take steps under paragraph (b) of that subsection (including costs incurred by that other person which the Scottish Ministers have to bear),
  - (c) an application relating to the regulator under paragraph (c) of that subsection up to the time of making the application.
- (5) The Scottish Ministers may recover the costs mentioned in subsection (4) as a civil debt.

*Exercise of regulatory functions: economic duty and code of practice*

#### **4 Regulators' duty in respect of sustainable economic growth**

- (1) In exercising its regulatory functions, each regulator must contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so.
- (2) The Scottish Ministers may give guidance to regulators with respect to the carrying out of the duty imposed by subsection (1).
- (3) Regulators must have regard to guidance given under subsection (2).
- (4) The Scottish Ministers must publish (in such manner as they consider appropriate) any such guidance.
- (5) Subsection (1) does not apply to a regulator to the extent that the regulator is, by or under an enactment, already subject to a duty to the same effect as that mentioned in that subsection.

#### **5 Code of practice**

- (1) The Scottish Ministers may issue and from time to time revise a code of practice in relation to the exercise of regulatory functions by a regulator.
- (2) The Scottish Ministers must publish (in such manner as they consider appropriate) any code of practice issued under subsection (1).
- (3) A code of practice issued under subsection (1) applies only to—
  - (a) such regulators as may be specified in the code, and
  - (b) such regulatory functions as may be so specified.

- (4) A copy of a code of practice issued under subsection (1) must be issued to the regulators to whom it applies.
- (5) A regulator to whom a code of practice issued under subsection (1) applies must, from the date a copy is issued to the regulator, have regard to the code—
  - (a) in determining any general policy or principles by reference to which the regulator exercises any regulatory functions to which the code applies, and
  - (b) in exercising any such regulatory functions.
- (6) References in this section to a code of practice issued under subsection (1) include references to such a code as revised from time to time under that subsection.

## **6 Code of practice: procedure**

- (1) Where the Scottish Ministers propose to issue or revise a code of practice under section 5, they must prepare a draft of the code (or revised code).
- (2) In preparing the draft, the Scottish Ministers must seek to secure that it is consistent with the principles in subsection (3).
- (3) The principles are—
  - (a) that regulatory functions should be—
    - (i) exercised in a way that is transparent, accountable, proportionate and consistent, and
    - (ii) targeted only at cases in which action is needed, and
  - (b) that regulatory functions should be exercised in a way that contributes to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of such functions to do so.
- (4) The Scottish Ministers must consult the following about the draft—
  - (a) persons appearing to them to be representative of regulators in respect of which the code or revised code would apply,
  - (b) such other persons as they consider appropriate.
- (5) If the Scottish Ministers decide to proceed with the draft (either in its original form or with modifications) they must lay the draft before the Scottish Parliament.
- (6) Where the draft so laid is approved by resolution of the Parliament, the Scottish Ministers may issue the code (or revised code).

### *Power to modify list of regulators*

## **7 Power to modify schedule 1**

- (1) The Scottish Ministers may by order modify schedule 1 so as to—
  - (a) add—
    - (i) a person, body or office-holder which has regulatory functions to the list of persons, bodies and office-holders for the time being listed there, or
    - (ii) a description of a person, body or office-holder having regulatory functions to that list,
  - (b) remove—

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- (i) a person, body or office-holder from that list, or
    - (ii) a description of a person, body or office-holder from that list,
  - (c) amend an entry on that list.
- (2) An order under subsection (1) may, in relation to a person, body or office-holder or a description of a person, body or office-holder—
- (a) specify that a function is or is not to be a regulatory function for the purposes of section 1, 4 or 5,
  - (b) specify the extent to which a function is or is not to be a regulatory function for such purposes.