

REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Regulatory Burdens

Section 72: Duty not to impose or maintain unnecessary burdens

179. This section creates a duty to keep regulatory functions under review and, when carrying out those functions, not to impose unnecessary burdens, and where proportionate and practicable, to remove unnecessary burdens. It is the person that is exercising the regulatory functions that decides whether or not a burden is unnecessary. In deciding whether the removal of an unnecessary burden would be disproportionate or impracticable, all relevant circumstances should be taken into account.
180. Subsections (3) - (6) provide that the person to whom the duty has been applied must publish a statement setting out what they propose to do pursuant to the duty. The statement must explain what has been done in respect of the duty since the previous statement, except if it is the first statement that has published. Where a burden that is unnecessary has not been removed, the statement must explain why its removal would be disproportionate or impracticable. The first statement must be published as soon as reasonably practicable after application of the duty in relation to the specified functions and is to be for a period of twelve months. Subsequent statements must be published during the twelve-month period or as soon as is reasonably practicable thereafter and should be for a period of twelve months. The statement is intended to provide transparency and the regulated persons can discharge the requirement in the manner that is most appropriate to them, for example, in annual reports.
181. A person to whom the duty has been applied is required, under subsection (7) to have regard to any statement produced pursuant to the duty.

Section 73: Functions to which section 72 applies

182. This section applies the duty in section 72 to those functions carried out by regulators listed in subsection (2). Subsection (1)(b) confers on a Minister of the Crown the power to specify regulatory functions in respect of which the duty in section 72 should apply. Subsections (3), (4) and (5) set out the arrangements in respect of Scotland, Northern Ireland and Wales.
183. Subsection (6) requires that the Minister consult the person whose regulatory functions are to be specified in the order and such other persons as are considered appropriate before making an order. An order may make such consequential amendments as are necessary. Subsections (7) – (9) specify the procedural requirements that apply in respect of the order-making power in this section.