

LEGISLATIVE AND REGULATORY REFORM ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Order-Making Powers

Powers

Section 2: Power to promote regulatory principles

42. [Section 2](#) provides a power for a Minister of the Crown to make provision by order which he considers would serve the purpose of ensuring that regulatory functions are exercised so as to comply with the Better Regulation Commission's five Principles of Good Regulation. ("Regulatory function" is defined in section 32.) These Principles of Good Regulation (subsection (3)) are that regulatory activities should be carried out in a way that is transparent, accountable, proportionate, consistent, and should be targeted only at cases in which action is needed.
43. Subsection (4) provides that orders made under this section can include provision which:
 - modifies the way in which a regulatory function is exercised by any person;
 - amends the constitution of a body exercising regulatory functions which is established by or under an enactment;
 - transfers, or provides for the delegation of, regulatory functions from one person to another;
 - amends or repeals any enactment.
44. One example of modifying the way in which regulatory functions are exercised by a person would be to use the power under this section to impose a requirement on a regulator, when carrying out regulatory functions, to have regard to views of a body representing consumers in that area, so that the regulator's regulatory activities are carried out in a way that is more accountable to consumers. Section 2 could also enable provision to be made requiring a regulator to exercise its functions on the basis of risk-assessment, so that its activities were proportionate to risk, with the result that the burden of enforcement on the highest-risk is increased, but falls least upon those with the best record of compliance.
45. An example of amending by order the constitution of a body exercising regulatory functions set up by or under an enactment, would be amending the statute governing a regulator so as to provide that it has a Board structure, with at least half of the Board comprised of non-executive directors, for the purpose of securing that its regulatory activities are carried out in a way which is accountable and transparent.

*These notes refer to the Legislative and Regulatory Reform Act
2006 (c.51) which received Royal Assent on 8 November 2006*

46. An example of transferring functions from one person to another would be where two regulators are operating in separate but closely related areas, and where it is considered appropriate to transfer the regulatory functions so that they are exercised by a single regulator (whether one of the existing regulators, or a new one). This could be for the purpose of securing that regulatory activities are more proportionate across the range of activities being regulated. It may also be for the purpose of securing that regulatory activities are carried out in a more consistent way across the two separate but related areas of activity.
47. Subsection (5) further provides that provision transferring or providing for the delegation of regulatory functions can include provision which:
- creates a new body to which, or a new office to the holder of which, these regulatory functions are then transferred ; or
 - abolishes a body from which, or office from the holder of which, regulatory functions have been transferred, as a result of which the body or office has become obsolete.
48. So in the context of transferring regulatory functions, it would be possible to create a new body to carry out the functions of an existing regulator, and to abolish a body carrying out regulatory functions which becomes obsolete once its functions have all been removed.
49. Subsection (6) provides that the provision that can be made under this section does not include provision conferring any new regulatory function or abolishing any regulatory function. So the provision that can be made under this section does not include provision changing existing regulatory functions conferred on any person by an enactment, and it is only possible to abolish a body carrying out regulatory functions if those functions continue to be exercised, having been transferred to another person.
50. Subsection (7) confers power for an order made under this section to make such consequential, supplementary, incidental or transitional provision as the Minister considers appropriate. This power includes power to make provision amending or repealing *any enactment or other provision*, including Acts of the Scottish Parliament, Scottish statutory instruments, and Northern Ireland legislation.