

LEGISLATIVE AND REGULATORY REFORM ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Regulators

Exercise of regulatory functions

Section 22: Code of Practice

117. This section enables a Minister of the Crown to issue and revise a Code of Practice relating to the exercise of regulatory functions.
118. Under subsection (2) any person exercising a regulatory function to which the section applies must have regard to the Code when determining general policies or principles by reference to which that person exercises those functions. So the duty to have regard to the Code in subsection (2) does not apply when the regulatory function itself is exercised.
119. However, under subsection (3), where a person exercises a regulatory function of setting standards or giving general guidance about the exercise of other regulatory functions (whether his own or someone else's regulatory functions), the duty to have regard to the Code applies directly to the exercise of that function of setting standards or giving general guidance. In this case, the duty under subsection (2) does not apply.
120. The duties to have regard to the Code in subsections (2) and (3) are subject to any other legal requirement affecting the exercise of the regulatory function: subsection (4).
121. The functions to which the section applies are those specified by order under section 24. An order under section 24 can specify some of the regulatory functions of a particular body, if it was thought appropriate for the duty to have regard to the Code to apply in relation to some but not all of its functions.