

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 108 to 111: Exercise of regulatory functions: economic growth

500. **Section 108** imposes a duty on persons exercising certain regulatory functions to have regard (in the exercise of those functions) to the desirability of promoting economic growth. In carrying out this duty, the person must, in particular, consider the importance of ensuring that any regulatory action they take is necessary and proportionate.
501. The background to these provisions is the post-implementation review of the Regulators' Compliance Code which found that regulators had a tendency to regard the promotion of economic growth as subsidiary to their statutory duties, the Focus on Enforcement reviews which found that businesses experience inconsistent or disproportionate enforcement decisions and Lord Heseltine's independent report entitled '*No stone unturned: in pursuit of growth*' which recommended that the government should impose an obligation on regulators to take proper account of the economic consequences of their actions.
502. The regulatory functions to which this new duty applies will be those specified by a Minister of the Crown under a power set out in section 109. The power is flexible enough to permit an order to specify some regulatory functions of a particular body but not others, if it is considered appropriate for the duty to apply in relation to some but not all of its regulatory functions.
503. The power to specify functions is subject to section 109(2) and (3) which set out consultation requirements and restrictions on the exercise of the power in relation to the devolved administrations.
504. A statutory instrument containing an order under section 109 may not be made unless a draft had been laid before, and approved by resolution of, each House of Parliament.
505. **Section 110** provides a power for a Minister of the Crown to issue guidance on: how regulatory functions can be exercised so as to promote economic growth; and how persons subject to the duty can demonstrate compliance with the duty. The draft guidance is subject to consultation requirements set out at section 110(5).
506. The guidance must be laid in draft before, and approved by resolution of, each House of Parliament as set out in section 110(6).
507. **Section 111** defines terms used in sections 108 to 110. The definition of "regulatory function" in subsection (1) is of particular note. Functions falling within the definition might be exercised by government departments and independent statutory regulators. The first limb of the definition (*subsection (1)(a)*) is aimed at functions of "regulating" (for example, by producing rules, or imposing requirements, which apply to a category of persons). The second limb of the definition (*subsection (1)(b)*) covers functions of enforcing or securing compliance with such regulation.

*These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015*

508. *Subsection (2)(b)(i)* expressly excludes from the definition of regulatory function the function of instigating and conducting criminal proceedings. However, this would not exclude the making of enforcement decisions prior to a decision to prosecute, such as a decision to investigate a matter or the reference to a prosecuting authority with a view to the prosecuting authority considering the commencement of proceedings in relation to the matter.
509. *Subsection (2)(b)(ii)* expressly excludes from the definition of regulatory function the function of conducting civil proceedings. The instigation of civil proceedings is not excluded.
510. **Sections 108 to 111** form part of the law of England and Wales, Scotland and Northern Ireland. Sections 109 and 110(1), (2) and (4) to (8), which confer powers to make subordinate legislation and issue guidance, come into force on the day on which the Act is passed, as does section 111 (which defines terms used in those sections). Sections 108 and 110(3) come into force on a day to be appointed by the Secretary of State in a commencement order.