



Draft Regulatory Enforcement And Sanctions Bill

and

Explanatory Notes

Cabinet Office 2007

Presented to Parliament by
the Minister for the Cabinet Office and Social Exclusion,
Chancellor of the Duchy of Lancaster
by Command of Her Majesty
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Regulatory Enforcement and Sanctions Bill

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PART 1

REGULATORY ENFORCEMENT BY LOCAL AUTHORITIES

The Local Better Regulation Office

1 Establishment of LBRO

- (1) The Local Better Regulation Office is established as a body corporate.
- (2) In this Part it is referred to as “LBRO”.
- (3) Schedule 1 (which makes further provision about LBRO) has effect.

2 Dissolution of the LBRO company

- (1) The company limited by guarantee with registered number 6237580 and the company name Local Better Regulation Office (in this Part called “the LBRO company”) is dissolved.
- (2) The registrar of companies for England and Wales must strike the name of the LBRO company off the register of companies before the end of the period of seven days beginning with the day on which this section comes into force.
- (3) Schedule 2 (which makes provision relating to the replacement of the LBRO company by LBRO) has effect.

General functions of LBRO

3 Objective

- (1) In exercising its functions under sections 4 to 6 LBRO has the objective of securing that local authorities exercise their relevant functions –
 - (a) effectively,
 - (b) in a way which does not give rise to unnecessary burdens, and
 - (c) in a way which conforms with the principles in subsection (2).
- (2) Those principles are that –
 - (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
 - (b) regulatory activities should be targeted only at cases in which action is needed.
- (3) In this Part “local authority” means –
 - (a) a county or district council in England;
 - (b) a London borough council;

- (c) the Common Council of the City of London;
 - (d) the Council of the Isles of Scilly;
 - (e) a port health authority in England (not being an authority specified in paragraphs (a) to (d));
 - (f) a county or county borough council in Wales.
- (4) In this Part “relevant function” means [functions carried out by local authorities under enactments relating to environmental health or trading standards - please see paragraphs 4.8 to 4.11 of the consultation document].

4 Guidance to local authorities

- (1) LBRO has the function of giving guidance to local authorities as to how to exercise their relevant functions.
- (2) Guidance under subsection (1) –
- (a) may be given to any one or more local authorities;
 - (b) may relate to any one or more relevant functions;
 - (c) may relate to the exercise of one or more relevant functions in a particular case.
- (3) A local authority must have regard to any guidance given to it under this section.
- (4) Before giving guidance under this section in relation to any relevant function LBRO must consult –
- (a) the persons likely to be affected by the exercise of that function, or persons representative of such persons, and
 - (b) such other persons as LBRO considers appropriate.
- (5) LBRO must publish (in such manner as it considers appropriate) any guidance given by it under this section.

5 Financial support and assistance to local authorities

LBRO may provide financial support and assistance to local authorities in relation to their exercise of their relevant functions.

6 Advice to Ministers

- (1) LBRO may at any time give advice or make proposals to a Minister of the Crown on –
- (a) the way in which local authorities exercise any one or more of their relevant functions;
 - (b) the effectiveness of legislation relating to the exercise of those functions;
 - (c) whether any other regulatory functions could appropriately be exercised by local authorities.
- (2) LBRO must give advice or make proposals to a Minister of the Crown on the matters referred to in subsection (1) if requested to do so by that Minister.
- (3) LBRO may at any time give advice or make proposals to the Welsh Ministers on the way in which local authorities exercise any one or more of their relevant

functions in relation to any matter in respect of which Welsh Ministers exercise functions.

- (4) LBRO must give advice or make proposals to the Welsh Ministers on the matter referred to in subsection (3) if requested to do so by the Welsh Ministers.

Enforcement priorities

7 List of enforcement priorities

- (1) LBRO must prepare and publish a list specifying, from among the matters in relation to which local authorities exercise their relevant functions, those matters to which local authorities should give priority in allocating resources.
- (2) LBRO must review the list—
 - (a) from time to time on its own initiative, or
 - (b) if requested to do so by the Minister.
- (3) If following a review LBRO decides to revise the list it must publish the revised list.
- (4) Before publishing the list or any revised list LBRO must—
 - (a) consult such persons as it considers appropriate, and
 - (b) obtain the consent of the Minister.
- (5) LBRO must publish details of any representations made to it as the result of any consultation under subsection (4)(a).
- (6) A local authority must have regard to the list or revised list for the time being published under this section.

Co-ordination of regulatory enforcement

8 Primary authorities

- (1) This section applies in a case where—
 - (a) a person (“the regulated person”) carries on an activity in the area of two or more local authorities, and
 - (b) each of those authorities has the same relevant function in relation to that activity.
- (2) A local authority with the relevant function may agree with the regulated person to be, for the purposes of sections 9 to 13, the primary authority for the exercise of that function in relation to the regulated person.
- (3) In a case where no agreement has been made under subsection (2), LBRO may on the application of the regulated person nominate any local authority with the relevant function to be, for those purposes, the primary authority for the exercise of that function in relation to the regulated person.
- (4) LBRO may in particular consider as suitable for nomination under subsection (3)—
 - (a) the local authority in whose area the regulated person principally carries out the activity in relation to which the relevant function is exercised;

- (b) the local authority in whose area the regulated person administers the carrying out of that activity.
- (5) Before nominating a local authority under subsection (3) LBRO must consult—
 - (a) that authority, and
 - (b) the regulated person.
- (6) LBRO must have particular regard to any representations made by a local authority under subsection (5) as to the resources available to it.
- (7) Where by virtue of this section a local authority agrees to be or is nominated as the primary authority for the exercise of a relevant function in relation to the regulated person, it must register itself as such in a register maintained by (or on behalf of) LBRO.
- (8) For the purposes of sections 9 to 13, a local authority is the primary authority in relation to a regulated person when it is registered as such under subsection (7).

9 Advisory function of primary authority

- (1) The primary authority has the function of—
 - (a) giving advice to the regulated person in relation to the relevant function;
 - (b) giving advice to other local authorities with that function as to how they should exercise it in relation to the regulated person.
- (2) The primary authority may make arrangements with the regulated person as to how it will discharge its function under subsection (1).

10 Enforcement action: requirement to obtain consent

- (1) This section applies in a case where a local authority other than the primary authority (“the enforcing authority”)—
 - (a) considers that the regulated person is or may be in breach of any restriction, requirement or condition to which the relevant function relates, and
 - (b) proposes to take any enforcement action in respect of that breach.
- (2) The enforcing authority must consult the primary authority before taking the proposed enforcement action.
- (3) The enforcing authority may not take the proposed enforcement action unless—
 - (a) the primary authority consents to it under section 11 (and the consent is not cancelled under that section), or
 - (b) on a reference under that section, LBRO consents to it.
- (4) Subsections (2) and (3) do not apply in a case where the enforcing authority considers that it should take the proposed enforcement action without delay because of an imminent risk of serious harm to human health or to the environment.
- (5) In such a case the enforcing authority must inform the primary authority of the enforcement action it has taken as soon as it reasonably can.

- (6) In subsection (4) the reference to harm to the environment includes harm to the health of animals and plants.
- (7) In this Part “enforcement action”, in relation to a breach of a restriction, requirement or condition means –
 - (a) any action which relates to securing compliance with the restriction, requirement or condition, or
 - (b) any action taken with a view to or in connection with the imposition of any sanction, criminal or otherwise, in respect of the breach.

11 Enforcement action: procedure for obtaining consent

- (1) Where a primary authority is consulted under section 10(2) it must, subject as follows, determine whether the proposed enforcement action is appropriate in all the circumstances.
- (2) On a determination under subsection (1) –
 - (a) if the primary authority determines that the proposed enforcement action is appropriate in all the circumstances, it must consent to the action;
 - (b) if the primary authority determines that that action is not appropriate in all the circumstances, it may not consent to the action.
- (3) If under subsection (2) the primary authority does not consent to the proposed enforcement action, the enforcing authority may refer the action to LBRO.
- (4) On such a reference –
 - (a) if LBRO agrees with the primary authority’s determination, it must confirm it;
 - (b) if LBRO does not agree with the primary authority’s determination, it must consent to the proposed enforcement action.
- (5) If under subsection (2) the primary authority consents to the proposed enforcement action, the regulated person may refer the action to LBRO if –
 - (a) the determination is inconsistent with advice previously given to the regulated person by the primary authority, and
 - (b) LBRO consents to the reference.
- (6) On such a reference –
 - (a) if LBRO agrees with the primary authority’s determination, it must confirm it;
 - (b) if LBRO does not agree with the primary authority’s determination, it must cancel the consent given by the primary authority.
- (7) The primary authority may, instead of making a determination under subsection (1) in relation to a proposed enforcement action, refer the action to LBRO.
- (8) If within a reasonable time after being consulted under section 10(2) the primary authority neither makes a determination under subsection (1) nor refers the proposed enforcement action to LBRO under subsection (7), the regulated person or the enforcing authority may, with the consent of LBRO, refer the action to LBRO.
- (9) On a reference under subsection (7) or (8) –

- (a) if LBRO determines that the proposed enforcement action is appropriate in all the circumstances, it must consent to the action;
 - (b) if LBRO determines that the action is not appropriate in all the circumstances it may not consent to the action.
- (10) LBRO must resolve any matter referred to it under this section within 28 days.
- (11) Where LBRO—
 - (a) cancels the consent of the primary authority under subsection (6)(b) or does not consent to a proposed enforcement action under subsection (9)(b), but
 - (b) recommends that some other enforcement action be taken, section 10(2) and (3) does not apply in relation to that action.
- (12) LBRO may delegate its functions under this section to such other person as it considers appropriate.

12 Enforcement action: guidance and directions

- (1) LBRO may give guidance or directions to any one or more local authorities about any enforcement action referred to it under section 11.
- (2) A local authority must have regard to any guidance, and comply with any direction, given to it under subsection (1).
- (3) LBRO must publish (in such manner as it considers appropriate) any guidance or directions given under this section.

13 Inspection plans

- (1) Where a relevant function consists of or includes a function of inspection, the primary authority may prepare a plan containing recommendations as to how local authorities with that function should exercise it in relation to the regulated person.
- (2) The plan may set out—
 - (a) the frequency at which, or circumstances in which, inspections should be carried out;
 - (b) what an inspection should consist of.
- (3) The primary authority must bring the plan to the notice of other local authorities with the function in such manner as the primary authority considers appropriate.
- (4) A local authority (including the primary authority) must have regard to the plan in deciding how to exercise its function of inspection in relation to the regulated person.
- (5) Where a local authority other than the primary authority proposes to exercise the function of inspection in relation to the regulated person otherwise than in accordance with the plan, it must consult the primary authority.
- (6) A primary authority may from time to time revise a plan prepared by it under this section; and subsections (3) to (5) apply in relation to any revision of the plan.

Co-ordination: supplementary

14 LBRO support to primary authorities

- (1) LBRO may do anything it considers appropriate for the purpose of supporting a primary authority in the exercise of the authority's functions under sections 9 to 13.
- (2) That includes making grants to a primary authority.

15 LBRO guidance

- (1) LBRO may give guidance to any one or more local authorities about the operation of sections 8 to 13.
- (2) The guidance may include, in particular, guidance to primary authorities about arrangements under section 9(2).
- (3) A local authority must have regard to any guidance given to it under this section.
- (4) Before giving guidance under this section LBRO must consult such persons as it considers appropriate.
- (5) LBRO must publish (in such manner as it considers appropriate) any guidance given by it under this section.

Ministerial powers

16 Guidance or directions by the Minister for the Cabinet Office

- (1) The Minister may give LBRO—
 - (a) guidance, or
 - (b) general or specific directions,as to the exercise of its functions.
- (2) The Minister may vary or revoke any guidance or directions given under this section.
- (3) The Minister must publish (in such manner as the Minister considers appropriate) any guidance or directions given under this section.
- (4) LBRO must have regard to any guidance, and comply with any directions, given under this section.

17 Guidance or directions by Welsh Ministers

- (1) The Welsh Ministers may give LBRO—
 - (a) guidance, or
 - (b) general or specific directions,as to the exercise of its functions in relation to any matter in respect of which the Welsh Ministers exercise functions.
- (2) The Welsh Ministers may vary or revoke any guidance or directions given under this section.

- (3) The Welsh Ministers must publish (in such manner as they consider appropriate) any guidance or directions given under this section.
- (4) LBRO must have regard to any guidance, and comply with any directions, given under this section.

Supplementary and general

18 Power to dissolve LBRO

- (1) The Minister may by order –
 - (a) provide for LBRO to be dissolved, and
 - (b) make consequential, supplementary, incidental and transitional provision in relation to its dissolution.
- (2) An order under subsection (1) may in particular –
 - (a) provide for the transfer of the property, rights and liabilities of LBRO to another person;
 - (b) provide for the transfer of the functions of LBRO to another person;
 - (c) provide that anything done by or in relation to LBRO is, so far as is necessary for continuing its effect, to have effect as if done by or in relation to another person;
 - (d) provide for anything (which may include legal proceedings) which is in the process of being done by or in relation to LBRO when a transfer under the order takes effect to be continued by or in relation to another person;
 - (e) provide for a reference to LBRO in an enactment, instrument or other document to be treated as a reference to another person;
 - (f) repeal, revoke or amend any enactment whenever passed or made (including an enactment contained in this Act).
- (3) Provision under subsection (2)(a) may include provision for property, rights or liabilities to be transferred –
 - (a) whether or not they would otherwise be capable of being transferred,
 - (b) without any instrument or other formality being required, and
 - (c) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.
- (4) Provision under subsection (2)(a) for the transfer of rights and liabilities relating to employees of LBRO must include provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) to apply in relation to the transfer.
- (5) Provision under subsection (2)(a) or (b) may include provision establishing a body corporate to which property, rights and liabilities, or functions, are transferred.
- (6) Before making an order under this section the Minister must consult such persons (or persons representative of such persons) as appear to the Minister to be substantially affected by the dissolution of LBRO.
- (7) An order under this section is to be made by statutory instrument.

- (8) The Minister may not make a statutory instrument containing an order under this section unless a draft has been laid before, and approved by resolution of, each House of Parliament.

19 Interpretation of Part 1

In this Part –

- “LBRO” has the meaning given in section 1;
- “the LBRO company” has the meaning given in section 2;
- “local authority” has the meaning given in section 3;
- “enforcement action” has the meaning given in section 10;
- “the Minister” means the Minister for the Cabinet Office;
- “the regulated person” is to be construed in accordance with section 8(1);
- “relevant function” has the meaning given in section 3.

PART 2

REGULATORY SANCTIONS

Introductory

20 “Regulator” and “relevant offence”

- (1) In this Part “regulator” means –
- (a) a designated regulator, or
 - (b) an authority with an enforcement function in relation to an offence under a designated enactment.
- (2) For the purposes of this section –
- “designated regulator” means a person specified in Schedule 3;
 - “designated enactment” means an enactment specified in Schedule 4;
 - “enforcement function” means a function (whether or not statutory) of taking any action with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where an offence is committed.
- (3) In this Part “relevant offence” means –
- (a) in relation to a designated regulator, an offence in relation to which the regulator has an enforcement function;
 - (b) in relation to an authority referred to in subsection (1)(b), an offence under a designated enactment in relation to which the authority has an enforcement function.

Fixed monetary penalties

21 Power to enable regulators to impose fixed monetary penalties

- (1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).

- (2) That purpose is to enable a regulator to impose a fixed monetary penalty on a person (“the defaulter”) in a case where the condition in subsection (3) is satisfied.
- (3) The condition is that the regulator is satisfied that an act or omission of the defaulter constitutes a relevant offence.
- (4) For the purposes of this section a “fixed monetary penalty” is a requirement to pay to the regulator an amount specified in, or calculable solely by reference to criteria specified in, an order under this section.
- (5) Where the relevant offence is—
 - (a) triable summarily only, and
 - (b) punishable by a fine (whether or not it is also punishable by a term of imprisonment),the amount of the fixed monetary penalty may not exceed the maximum amount of that fine.
- (6) A fixed monetary penalty under this section is to be imposed by a notice.
- (7) An order under this section may include provision as to the standard of proof to be met before the regulator may be satisfied, for the purposes of the order, that an act or omission of the defaulter constitutes a relevant offence.

22 Fixed monetary penalties: procedure

- (1) An order under section 21 may only enable a regulator to impose a fixed monetary penalty in relation to an act or omission if the order secures the results in subsection (2).
- (2) Those results are that—
 - (a) where the regulator decides to impose the penalty, the regulator is required to serve on the defaulter a notice requiring payment which complies with subsection (3),
 - (b) the defaulter has the same defences in relation to the imposition of the penalty as are available to the defaulter under any enactment in relation to the relevant offence,
 - (c) the defaulter is able to require the regulator, by notice, to review the imposition of the penalty,
 - (d) the regulator may, on such a review, decide to withdraw or confirm the penalty,
 - (e) the regulator is required to give reasons for its decision on such a review, and
 - (f) the defaulter is able to appeal against a decision of the regulator to confirm the penalty.
- (3) To comply with this subsection the notice referred to in subsection (2)(a) must include information as to—
 - (a) the grounds for imposing the penalty,
 - (b) the amount of the penalty and (if appropriate) how it was calculated,
 - (c) how payment may be made,
 - (d) the period within which payment must be made,
 - (e) any early payment discounts or late payment penalties,
 - (f) the defences referred to in subsection (2)(b) that are available,
 - (g) the defaulter’s rights to require review and rights of appeal, and

- (h) the consequences of non-payment.
- (4) Provision pursuant to subsection (2)(c) must secure that any review takes place within a period provided for in the order, such period not to exceed the period of 28 days beginning with the day on which the defaulter's notice requiring review is received by the regulator.

23 Fixed monetary penalties: effect

An order under section 21 which enables a regulator to impose a fixed monetary penalty in relation to an act or omission must secure that the imposition of the penalty has the following effects—

- (a) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission, and
- (b) where by virtue of section 24 the regulator would otherwise have power to impose another requirement on the defaulter in respect of the act or omission, the regulator may not do so.

Discretionary requirements

24 Power to enable regulators to impose discretionary requirements

- (1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).
- (2) That purpose is to enable a regulator, in a case where the condition in subsection (3) is satisfied, to impose on a person ("the defaulter") one or more of the requirements specified in subsection (4).
- (3) The condition referred to in subsection (2) is that the regulator is satisfied that an act or omission of the defaulter constitutes a relevant offence.
- (4) The requirements referred to in subsection (2) are—
 - (a) a requirement to pay a monetary penalty to the regulator of such amount as the regulator may determine;
 - (b) a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the act or omission does not continue or recur;
 - (c) a requirement to take such steps as the regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the act or omission had not occurred.
- (5) A requirement imposed under this section is to be imposed by a notice.
- (6) An order under this section may include provision as to the standard of proof to be met before the regulator may be satisfied, for the purposes of the order, that an act or omission of the defaulter constitutes a relevant offence.

25 Discretionary requirements: procedure

- (1) An order under section 24 may only enable a regulator to impose a requirement in relation to an act or omission if the order secures the results in subsection (2).
- (2) Those results are that—

- (a) where the regulator proposes to impose the requirement, the regulator is required to serve on the defaulter a notice of what is proposed which complies with subsection (3),
 - (b) the defaulter has the same defences in relation to the imposition of the requirement as are available to the defaulter under any enactment in relation to the relevant offence,
 - (c) the defaulter is able to make written representations and objections to the regulator in relation to the imposition of the requirement,
 - (d) after the end of the period for making such representations and objections, the regulator is required to determine whether to –
 - (i) impose the requirement,
 - (ii) withdraw or vary the requirement, or
 - (iii) impose any other requirement which the regulator has power to impose under section 24 in relation to the act or omission,
 - (e) where the regulator decides to impose any requirement, the notice imposing it complies with subsection (4), and
 - (f) the defaulter is able to appeal against the imposition of any requirement.
- (3) To comply with this subsection the notice referred to in subsection (2)(a) must include information as to –
- (a) the grounds for imposing the requirement,
 - (b) the defences referred to in subsection (2)(b) that are available,
 - (c) the defaulter’s right to make representations and objections, and
 - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice is received by the defaulter.
- (4) To comply with this subsection the notice referred to in subsection (2)(e) must include information as to –
- (a) the grounds for imposing the requirement,
 - (b) where the requirement is a requirement to pay a monetary penalty –
 - (i) how payment may be made,
 - (ii) the period within which payment must be made, which may not be less than the period of 28 days beginning with the day on which the notice is received by the defaulter, and
 - (iii) any early payment discounts or late payment penalties,
 - (c) the defaulter’s rights of appeal, and
 - (d) the consequences of non-compliance.

26 Discretionary requirements: voluntary undertakings

- (1) An order under section 24 which enables a regulator to impose a requirement to pay a monetary penalty to the regulator in respect of any act or omission may include provision –
- (a) for the defaulter, after service of a notice referred to in section 25(2)(a) proposing the imposition of a requirement to pay a monetary penalty, to be able to offer undertakings as to action to be taken by the defaulter,
 - (b) for the regulator to be able to accept the undertakings before making a determination as specified in section 25(2)(d), and
 - (c) for the undertakings to be taken into account by the regulator in making its determination under section 25(2)(d).

- (2) The action specified in any such undertaking may only be action of a description referred to in section 34(4).

27 Discretionary requirements: effect

- (1) An order under section 24 which enables a regulator to impose one or more requirements in relation to an act or omission must secure the results in subsection (2), so far as applicable.
- (2) Those results are that –
- (a) in a case where a requirement to pay a monetary penalty, but no other requirement, is imposed on the defaulter –
 - (i) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission, and
 - (ii) where by virtue of section 21 or 24 the regulator would otherwise have power to impose a fixed monetary penalty or another requirement on the defaulter in respect of the act or omission, the regulator may not do so;
 - (b) in a case not falling within paragraph (a), where a requirement is imposed on the defaulter or undertakings from the defaulter are accepted by the regulator –
 - (i) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission unless the defaulter fails to comply with the requirement or the undertakings (or any part of the undertakings), and
 - (ii) where by virtue of section 21 or 24 the regulator would otherwise have power to impose a fixed monetary penalty or another requirement on the defaulter in respect of the act or omission, the regulator may not do so unless the defaulter fails to comply with the requirement or the undertakings (or any part of the undertakings).
- (3) An order under section 24 may for the purposes of subsection (2)(b)(i) make provision for any period within which criminal proceedings may be instituted against the defaulter to be extended.
- (4) An order under section 24 which enables a regulator –
- (a) to impose any requirement on the defaulter which is not a requirement to pay a monetary penalty, or
 - (b) to accept any undertakings from the defaulter,
- may provide that, if the defaulter fails to comply with the requirement or undertakings (or any part of the undertakings), the defaulter must pay a monetary penalty to the regulator.
- (5) An order under section 24 making provision as specified in subsection (4) may –
- (a) specify the amount of the penalty to be paid,
 - (b) provide for the amount to be calculated by reference to criteria specified in the order,
 - (c) provide for the amount to be determined by the regulator, or
 - (d) provide for the amount to be determined in any other way.
- (6) An order under section 24 making provision as specified in subsection (4) must secure that –

- (a) the regulator is required to serve on the defaulter a notice requiring payment, and
- (b) the defaulter is able to appeal against that notice.

Permanent cessation of regulated activity

28 Power to enable regulators to require permanent cessation of activity

- (1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).
- (2) That purpose is to enable a regulator to require a person (“the defaulter”) to cease carrying on an activity in a case where the conditions in subsection (3) are satisfied.
- (3) The conditions are that –
 - (a) the regulator is satisfied that the defaulter is doing something, in or in relation to the carrying on of that activity, which presents a significant risk of serious harm to human health or to the environment,
 - (b) the regulator is satisfied that the defaulter is committing a relevant offence in doing that thing, and
 - (c) the defaulter has previously been convicted of that offence.
- (4) A requirement imposed under this section is to be imposed by a notice.
- (5) An order under this section may include provision as to the standard of proof to be met before the regulator may be satisfied as specified in subsection (3)(a) and (b).
- (6) In subsection (3) the reference to harm to the environment includes harm to the health of animals and plants.

29 Permanent cessation of activity: procedure

- (1) An order under section 28 may only enable a regulator to require the cessation of an activity if the order secures the results in subsection (2).
- (2) Those results are that –
 - (a) where the regulator proposes to impose that requirement, the regulator is required to serve on the defaulter a notice of what is proposed which complies with subsection (3),
 - (b) the defaulter has the same defences in relation to the imposition of the requirement as are available to the defaulter under any enactment in relation to the relevant offence,
 - (c) the defaulter is able to make written representations and objections to the regulator in relation to the imposition of the requirement,
 - (d) after the end of the period for making such representations and objections, the regulator is required to determine whether to impose or withdraw the requirement,
 - (e) where the regulator decides to impose the requirement, the notice imposing it complies with subsection (4), and
 - (f) the defaulter is able to appeal against the imposition of the requirement.

- (3) To comply with this subsection the notice referred to in subsection (2)(a) must include information as to—
 - (a) the grounds for imposing the requirement,
 - (b) the defences referred to in subsection (2)(b) that are available,
 - (c) the defaulter’s right to make representations and objections, and
 - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice is received by the defaulter.
- (4) To comply with this subsection the notice referred to in subsection (2)(e) must include information as to—
 - (a) the activity which must cease and the date by which it must cease,
 - (b) the grounds for imposing the requirement,
 - (c) the defaulter’s rights of appeal, and
 - (d) the consequences of non-compliance.
- (5) An order under section 28 may include provision for compensation (including compensation by a Minister of the Crown) where—
 - (a) the defaulter successfully appeals against the requirement, or
 - (b) the notice is withdrawn by the regulator.

30 Permanent cessation of activity: effect

- (1) An order under section 28 which enables a regulator to require the cessation of an activity must secure that, if the defaulter fails to comply with that requirement, the defaulter must pay a monetary penalty to the regulator.
- (2) An order under section 28 making provision as specified in subsection (1) may—
 - (a) specify the amount of the penalty to be paid,
 - (b) provide for the amount to be calculated by reference to criteria specified in the order,
 - (c) provide for the amount to be determined by the regulator, or
 - (d) provide for the amount to be determined in any other way.
- (3) An order under section 28 making provision as specified in subsection (1) must secure that—
 - (a) the regulator is required to serve on the defaulter a notice requiring payment, and
 - (b) the defaulter is able to appeal against that notice.

Temporary cessation of regulated activity

31 Power to enable regulators to require temporary cessation of activity

- (1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).
- (2) That purpose is to enable a regulator to require a person (“the defaulter”) to cease carrying on an activity for a period specified by the regulator in a case where the condition in subsection (3) is satisfied.
- (3) That condition is that the regulator has reasonable grounds to suspect that—

- (a) the defaulter is doing something, in or in relation to the carrying on of that activity, which presents a significant risk of serious harm to—
 - (i) human health,
 - (ii) the environment, or
 - (iii) the financial interests of consumers, and
 - (b) the defaulter is committing a relevant offence in doing that thing.
- (4) The period referred to in subsection (2) may not exceed six months.
- (5) A requirement imposed under this section is be imposed by a notice.
- (6) In subsection (3) the reference to harm to the environment includes harm to the health of animals and plants.

32 Temporary cessation of activity: procedure

- (1) An order under section 31 may only enable a regulator to require the cessation of an activity for a specified period if the order secures the results in subsection (2).
- (2) Those results are that—
- (a) where the regulator decides to impose that requirement, the regulator is required to serve on the defaulter a notice imposing the requirement which complies with subsection (3),
 - (b) the defaulter has the same defences in relation to the imposition of the requirement as are available to the defaulter under any enactment in relation to the relevant offence, and
 - (c) the defaulter is able to appeal against the imposition of the requirement.
- (3) To comply with this subsection the notice referred to in subsection (2)(a) must include information as to—
- (a) the activity which must cease and the date by which it must cease,
 - (b) the grounds for imposing the requirement,
 - (c) the defences referred to in subsection (2)(b) that are available,
 - (d) the defaulter’s rights of appeal, and
 - (e) the consequences of non-compliance.
- (4) An order under section 31 may include provision for compensation (including compensation by a Minister of the Crown) where—
- (a) the defaulter successfully appeals against the requirement, or
 - (b) the notice is withdrawn by the regulator.

33 Temporary cessation of activity: effect

- (1) An order under section 31 which enables a regulator to require the cessation of an activity for a specified period must secure that, if the defaulter fails to comply with that requirement, the defaulter must pay a monetary penalty to the regulator.
- (2) An order under section 31 making provision as specified in subsection (1) may—
- (a) specify the amount of the penalty to be paid,

- (b) provide for the amount to be calculated by reference to criteria specified in the order,
 - (c) provide for the amount to be determined by the regulator, or
 - (d) provide for the amount to be determined in any other way.
- (3) An order under section 31 making provision as specified in subsection (1) must secure that—
- (a) the regulator is required to serve on the defaulter a notice requiring payment, and
 - (b) the defaulter is able to appeal against that notice.

Enforcement undertakings

34 Power to enable regulators to accept enforcement undertakings

- (1) A Minister of the Crown may by order make provision for the purpose specified in subsection (2).
- (2) That purpose is—
- (a) to enable a regulator to accept an enforcement undertaking from a person (“the defaulter”) in a case where the regulator has reasonable grounds to suspect that an act or omission of the defaulter constitutes a relevant offence, and
 - (b) for the acceptance of the undertaking to have the consequences in subsection (5).
- (3) For the purposes of this Part, an “enforcement undertaking” is an undertaking by the defaulter to take such action as may be specified in the undertaking within such period as may be so specified.
- (4) The action specified in an enforcement undertaking must be of one or more of the following descriptions—
- (a) action to secure that the act or omission of the defaulter is not repeated or continued;
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the act or omission had not taken place;
 - (c) action (including the payment of a sum of money) to benefit any person affected by the act or omission.
- (5) The consequences in this subsection are that, unless the defaulter has failed to comply with the undertaking or any part of it—
- (a) the defaulter may not at any time be convicted of the relevant offence in respect of the act or omission, and
 - (b) where by virtue of section 21 or 24 the regulator would otherwise have power to impose a fixed monetary penalty or other requirement on the defaulter in respect of the act or omission, the regulator may not do so.
- (6) An order under this section which makes provision for enforcement undertakings may in particular include provision—
- (a) as to the procedure for entering into the undertaking;
 - (b) as to the terms of the undertaking;
 - (c) as to publication of the undertaking by the regulator;
 - (d) as to variation of the undertaking;

- (e) as to circumstances in which the defaulter may be regarded as having complied with the undertaking;
- (f) as to monitoring by the regulator of the defaulter’s compliance with the undertaking;
- (g) as to certification by the regulator that the defaulter has complied with the undertaking;
- (h) in a case where the defaulter gives inaccurate, misleading or incomplete information in relation to the undertaking, for the defaulter to be regarded as not having complied with it;
- (i) in a case where the defaulter has complied partly but not fully with the undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the defaulter;
- (j) for the purpose of enabling criminal proceedings to be instituted against the defaulter in respect of the relevant offence in the event of breach of the undertaking or any part of it, for any period within which those proceedings may be instituted to be extended.

Subordinate legislation

35 Offences under subordinate legislation

- (1) This section applies where, by virtue of a relevant enactment, a Minister of the Crown has, or the Welsh Ministers have, power by statutory instrument to make provision creating a criminal offence.
- (2) That power includes power to make, in relation to a relevant enforcement authority, any provision which could be made by an order under this Part if, for the purposes of this Part—
 - (a) the relevant enforcement authority were a regulator, and
 - (b) the offence were a relevant offence in relation to that regulator.
- (3) In subsection (1) “relevant enactment” means any of the following—
 - (a) the Sea Fish (Conservation) Act 1967 (c. 84), section 5;
 - (b) the Hovercraft Act 1968 (c. 59), section 1;
 - (c) the Health and Safety at Work etc. Act 1974 (c. 37), section 15;
 - (d) the Animal Health Act 1981 (c. 22);
 - (e) the Fisheries Act 1981 (c. 29), section 30;
 - (f) the Electricity Act 1989 (c. 29), section 29;
 - (g) the Food Safety Act 1990 (c. 16);
 - (h) the Water Industry Act 1991 (c. 56), sections 67 and 69;
 - (i) the Merchant Shipping Act 1995 (c. 21);
 - (j) the Environment Act 1995 (c. 25), section 97;
 - (k) the Pollution Prevention and Control Act 1999 (c. 24), section 2;
 - (l) the Regulatory Reform Act 2001 (c. 6), section 1 (so far as continuing to have effect).
- (4) In subsection (2) “relevant enforcement authority” means a person, other than a designated regulator, with an enforcement function in relation to the offence.
- (5) For the purposes of subsection (4) “designated regulator” and “enforcement function” have the same meanings as they have for the purposes of section 20.

Guidance

36 Guidance as to use of powers under this Part

- (1) No provision may be made under or by virtue of this Part—
 - (a) to impose a fixed monetary penalty,
 - (b) to impose a requirement under section 24, 28 or 31, or
 - (c) to accept an undertaking under section 34,unless the instrument containing the provision secures the results in subsection (2).
- (2) Those results are that—
 - (a) the regulator is required to publish guidance about the imposition of the penalty or requirement or acceptance of the undertaking,
 - (b) in the case of guidance relating to the imposition of a fixed monetary penalty or of any other requirement, the guidance contains the relevant information,
 - (c) the regulator is required to revise the guidance where appropriate,
 - (d) the regulator is required to consult such persons as the order may specify before publishing any guidance or revised guidance, and
 - (e) the regulator is required to have regard to the guidance or revised guidance in exercising its functions.
- (3) In the case of guidance relating to the imposition of a fixed monetary penalty, the relevant information referred to in subsection (2)(b) is information as to—
 - (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the defences available,
 - (c) what the penalty is or how it is calculated, and
 - (d) rights to require review and rights of appeal.
- (4) In the case of guidance relating to the imposition of a requirement under section 24, the relevant information referred to in subsection (2)(b) is information as to—
 - (a) the circumstances in which the requirement is likely to be imposed,
 - (b) the defences available,
 - (c) in the case of a requirement to pay a monetary penalty, the matters likely to be taken into account by the regulator in determining the amount of the penalty, and
 - (d) rights to make representations and objections and rights of appeal.
- (5) In the case of guidance relating to the imposition of a requirement under section 28, the relevant information referred to in subsection (2)(b) is information as to—
 - (a) the circumstances in which the regulator is likely to impose the requirement,
 - (b) the defences available, and
 - (c) rights to make representations and objections and rights of appeal.
- (6) In the case of guidance relating to the imposition of a requirement under section 31, the relevant information referred to in subsection (2)(b) is information as to—
 - (a) the circumstances in which the regulator is likely to impose the requirement,

- (b) the defences available, and
- (c) rights of appeal.

37 Guidance as to enforcement of relevant offences

- (1) Where powers are conferred on a regulator under or by virtue of this Part in relation to any relevant offence or offences, the regulator must prepare and publish guidance about how the offence or offences are enforced.
- (2) The guidance must, for each offence to which it relates, include guidance as to—
 - (a) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,
 - (b) the action which the regulator may take to enforce the offence, whether by virtue of this Part or otherwise, and
 - (c) the circumstances in which the regulator is likely to take any such action.
- (3) A regulator may from time to time revise guidance published by it under this section and publish the revised guidance.
- (4) The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this section.

Devolution

38 Scotland

- (1) An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.
- (2) Before making an order under this Part in relation to an offence in Scotland, the Minister making it must obtain the consent of the Lord Advocate.
- (3) Before making an order under this Part in relation to a regulator which is a local authority in Scotland, the Minister making it must consult the Scottish Ministers.
- (4) In subsection (3), “local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

39 Northern Ireland

An order under this Part may not, except for consequential purposes, make any provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly.

40 Wales

- (1) The powers conferred on a Minister of the Crown under sections 21 to 34 may also be exercised, in relation to matters in Wales in respect of which Welsh Ministers exercise functions, by the Welsh Ministers after consulting the Secretary of State.

- (2) A Minister of the Crown must consult the Welsh Ministers before making any provision under this Part which relates to an offence which applies in or in relation to Wales.
- (3) A Minister of the Crown must obtain the consent of the Welsh Ministers before making any provision under this Part which relates to an offence which –
 - (a) applies in or in relation to Wales, and
 - (b) relates to a matter in respect of which Welsh Ministers exercise functions.
- (4) An order under this Part which makes provision which would be within the legislative competence of the National Assembly for Wales if it were contained in a Measure of the Assembly (or, if the order is made after the Assembly Act provisions come into force, an Act of the Assembly) may only be made with the consent of the Assembly.

Supplementary and general

41 Monetary penalties

- (1) An order under this Part which enables a regulator to require a person to pay a monetary penalty may include provision –
 - (a) for early payment discounts;
 - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty;
 - (c) for the regulator to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt.
- (2) Where by virtue of this Part a regulator receives –
 - (a) any monetary penalty, or
 - (b) any interest or other financial penalty for late payment of a monetary penalty,the regulator must pay it into the Consolidated Fund.

42 Appeals

- (1) An order under this Part which makes provision for an appeal in relation to the imposition of any fixed monetary penalty or other requirement on a person may include –
 - (a) provision suspending, pending determination of the appeal, the fixed monetary penalty or other requirement;
 - (b) provision as to the powers of any person to whom the appeal is made.
- (2) The provision referred to in subsection (1)(b) includes provision conferring on the person to whom the appeal is made power –
 - (a) to withdraw the penalty;
 - (b) to confirm the penalty;
 - (c) to take such steps as the regulator could take in relation to the act or omission to which the penalty relates;
 - (d) to remit the decision to confirm the penalty, or any matter relating to that decision, to the regulator.

43 Supplementary powers

- (1) An order under this Part may repeal, revoke or amend any enactment.
- (2) An order under this Part may include consequential, supplementary, incidental and transitional provision.
- (3) The supplementary provision referred to in subsection (2) includes provision for the purpose of facilitating the use of powers conferred by an order under this Part, and in particular provision which for that purpose –
 - (a) confers or extends powers to require information;
 - (b) authorises the use of information in evidence which could not otherwise lawfully so be used;
 - (c) confers or extends powers of entry or search.

44 Consultation

- (1) A person proposing to make an order under this Part must consult the following (in addition to any persons who must be consulted under sections 38 and 40) –
 - (a) the regulator to which the order relates,
 - (b) such organisations as appear to that person to be representative of persons substantially affected by the proposals, and
 - (c) such other persons as that person considers appropriate.
- (2) If, as a result of any consultation required by subsection (1), it appears to that person that it is appropriate to change the whole or any part of the proposals, the person must undertake such further consultation with respect to the changes as the person considers appropriate.
- (3) If, before the day on which this Part comes into force, any consultation was undertaken which, had it been undertaken on or after that day, would to any extent have satisfied the requirements of this section, those requirements may to that extent be taken to have been satisfied.

45 Other procedural requirements

- (1) An order under this Part is to be made by statutory instrument.
- (2) A statutory instrument containing an order under this Part made by a Minister of the Crown may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) A statutory instrument containing an order under this Part made by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

PART 3

GENERAL

46 Interpretation

In this Act “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).

47 Extent

- (1) Part 1 extends to England and Wales only (except that the amendments made by Schedule 1 have the same extent as the enactments to which they relate).
- (2) Part 2 and this Part extend to England and Wales, Scotland and Northern Ireland.

48 Commencement

- (1) Part 1 comes into force on such day as the Minister for the Cabinet Office may by order made by statutory instrument appoint.
- (2) Part 2 comes into force at the end of the period of two months beginning with the day on which this Act is passed.

49 Short title

This Act may be cited as the Regulatory Enforcement and Sanctions Act 2008.

SCHEDULES

SCHEDULE 1

Section 1

LBRO: SUPPLEMENTARY

Status

- 1 (1) LBRO is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) The property of LBRO is not to be regarded as the property of, or property held on behalf of, the Crown.

Membership

- 2 LBRO is to consist of ordinary and ex officio members.
- 3 (1) There are to be at least five and no more than ten ordinary members.
 - (2) One of the ordinary members is to be the chair of LBRO.
 - (3) The chair and other ordinary members are to be appointed by the Minister.
 - (4) The Minister must consult the chair before appointing the other ordinary members.
 - (5) LBRO is to pay to or in respect of the ordinary members such sums as the Minister may determine by way of or in respect of remuneration, allowances, expenses, pensions or gratuities.
 - (6) If the Minister thinks that there are special circumstances that make it right for a person ceasing to be an ordinary member of LBRO to receive compensation, LBRO must pay to that person such compensation as the Minister may determine.
- 4 (1) The ex officio members are to be –
 - (a) the Chief Executive of LBRO (see paragraph 7), and
 - (b) such other employees of LBRO as may for the time being be appointed by the Chief Executive after consulting the chair.
- (2) The number of ex officio members appointed under sub-paragraph (1)(b) may not at any time exceed –
 - (a) such number as may for the time being be specified by the Minister, or
 - (b) the number of ordinary members.
- 5 Service as a member of LBRO is not service in the civil service of the State.

Tenure

- 6 (1) Subject to the other provisions of this Schedule, a person holds and vacates office as a member of LBRO in accordance with the terms and conditions of their appointment.
- (2) A person may not be appointed as an ordinary member of LBRO for a term of more than five years.
- (3) A person may at any time resign as an ordinary member of LBRO by giving notice in writing to the Minister.
- (4) The Minister may remove a person as an ordinary member of LBRO at any time if –
- (a) the ordinary member has, at any time, been convicted of a criminal offence, or
 - (b) in the opinion of the Minister –
 - (i) the ordinary member has failed to comply with the terms of their appointment, or
 - (ii) the ordinary member is otherwise unable, unfit or unwilling to perform their functions.
- (5) A person who has ceased to be an ordinary member is eligible for reappointment for a further term or terms but the total period of appointment of an ordinary member (whether or not in consecutive terms) may not exceed ten years.

Employees

- 7 (1) LBRO is to have a Chief Executive.
- (2) The Chief Executive is to be an employee of LBRO.
- (3) The first Chief Executive is to be appointed by the Minister and subsequent appointments are to be made by LBRO with the approval of the Minister.
- (4) LBRO may appoint other employees, subject to the approval of the Minister as to numbers and terms and conditions of employment.
- (5) Service as an employee of LBRO is not service in the civil service of the State.
- (6) LBRO may pay to or in respect of an employee sums by way of or in respect of remuneration, allowances, expenses, pensions, gratuities or compensation for loss of employment, subject to any conditions imposed by the Minister under sub-paragraph (4).
- (7) The Chief Executive may not take part in the determination of the amount of any remuneration, allowance, pension, gratuity or compensation payable to him or her.

Committees

- 8 (1) LBRO may establish one or more committees.
- (2) A committee established under this paragraph may include persons who are neither members nor employees of LBRO.

- (3) A committee established under this paragraph may establish one or more sub-committees.
- (4) LBRO may pay sums by way of or in respect of expenses to or in respect of a person who is a member of a committee or a sub-committee established under this paragraph but who is not a member or employee of LBRO.

Proceedings

- 9 (1) Subject to this Schedule, LBRO may regulate –
 - (a) its own proceedings (including quorum), and
 - (b) the proceedings (including quorum) of any of its committees.
- (2) A committee of LBRO may regulate the proceedings (including quorum) of any of its sub-committees.
- (3) The validity of proceedings of LBRO, or of any of its committees or sub-committees, is not affected by –
 - (a) a vacancy, or
 - (b) a defective appointment.

Delegation

- 10 LBRO may delegate any of its functions to any of its members, employees, committees or sub-committees.

Ancillary powers

- 11 (1) LBRO may do anything which it thinks necessary or expedient for the purpose of, or in connection with, the exercise of its functions.
- (2) In particular, LBRO may –
 - (a) enter into agreements;
 - (b) acquire or dispose of property;
 - (c) borrow money;
 - (d) accept gifts;
 - (e) invest money.

Annual report

- 12 (1) LBRO must send to the Minister a report on the discharge of its functions during each financial year.
- (2) A report must be sent under sub-paragraph (1) within such period beginning with the end of the financial year to which the report relates as the Minister may direct.
- (3) The Minister must lay before Parliament a copy of each report received under sub-paragraph (1).

Accounts

- 13 (1) LBRO must keep proper accounts and proper records in relation to the accounts.
- (2) LBRO must prepare a statement of accounts for each financial year.

- (3) The statement must comply with any directions given by the Minister with the consent of the Treasury as to –
 - (a) the information to be contained in the statement;
 - (b) the form which the statement is to take;
 - (c) the manner in which the information is to be presented;
 - (d) the methods and principles according to which the statement is to be prepared.
- (4) LBRO must send copies of the statement to the Minister and the Comptroller and Auditor General within such period as the Minister directs.
- (5) The Comptroller and Auditor General must –
 - (a) examine, certify and report on the statement received under sub-paragraph (4), and
 - (b) send a copy of the certified statement and report to the Minister as soon as possible.
- (6) The Minister must lay before Parliament a copy of each statement and report sent under sub-paragraph (5)(b).

Financial year

- 14 (1) The financial year of LBRO is the period of twelve months ending on 31 March.
- (2) But the first financial year of LBRO is the period –
 - (a) starting on the day on which section 1 comes into force, and
 - (b) ending on the following 31 March.

Instruments and authentication

- 15 (1) The fixing of the seal of LBRO shall be authenticated by the signature of the chair or of another person authorised by LBRO to act for that purpose.
- (2) A document purporting to be duly executed under the seal of LBRO, or to be signed on LBRO’s behalf, shall be received in evidence and, unless the contrary is proved, shall be treated as having been so executed or signed.

Records

- 16 In the Public Records Act 1958 (c. 51), in Schedule 1 (definition of public records), in Part 2 of the Table at the end of paragraph 3, at the appropriate place insert –

“Local Better Regulation Office.”

Parliamentary disqualification

- 17 In the House of Commons Disqualification Act 1975 (c. 24), in Schedule 1, in Part 2 (bodies of which all members are disqualified), at the appropriate place insert –

“The Local Better Regulation Office.”

Investigation

- 18 In the Parliamentary Commissioner Act 1967 (c. 13), in Schedule 2

(departments etc. subject to investigation), at the appropriate place insert –
“Local Better Regulation Office.”

Freedom of Information Act 2000 (c. 36)

- 19 In the Freedom of Information Act 2000, in Schedule 1, in Part 6 (other public bodies and offices: general), at the appropriate place insert –
“The Local Better Regulation Office.”

Transitional provisions

- 20 (1) A person who immediately before the day on which section 1 comes into force is the chair of the LBRO company is to be treated –
- (a) as having been appointed as the chair of LBRO under paragraph 3(3), and
 - (b) as having been so appointed on the day on which, and for the term for which, that person was appointed as the chair of the LBRO company.
- (2) A person who immediately before the day on which section 1 comes into force is a director of the LBRO company is to be treated –
- (a) as having been appointed as an ordinary member of LBRO under paragraph 3(3), and
 - (b) as having been so appointed on the day on which, and for the term for which, that person was appointed as a director of the LBRO company.
- (3) A person who is the Chief Executive of the LBRO company immediately before the day on which section 1 comes into force is to be treated as appointed as the first Chief Executive of LBRO under paragraph 7(3).
- (4) A committee or sub-committee of the LBRO company which was in existence immediately before the day on which section 1 comes into force is to be treated as having been established as a committee or sub-committee of LBRO under paragraph 8(1) or (3).

SCHEDULE 2

Section 2

REPLACEMENT OF THE LBRO COMPANY BY LBRO

Transfer of staff

- 1 (1) For the purposes of TUPE –
- (a) the functions conferred on LBRO by this Act are to be treated as transferred to LBRO from the LBRO company on the day on which section 2 comes into force;
 - (b) that transfer of functions is to be treated as a transfer of an undertaking to which TUPE applies;
 - (c) each person who was, immediately before the day on which this Part comes into force, employed by the LBRO company under a contract of employment is to be treated as employed in the undertaking immediately before the day on which section 2 comes into force.

- (2) In sub-paragraph (1) “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Transfer of property, rights and liabilities

- 2 (1) All the property, rights and liabilities to which the LBRO company was entitled or subject immediately before the day on which section 2 comes into force become on that day property, rights and liabilities of LBRO.
- (2) In sub-paragraph (1) the reference to rights and liabilities does not include rights and liabilities under or in connection with a contract of employment which are transferred pursuant to paragraph 1.
- (3) Sub-paragraph (1) operates in relation to property, rights and liabilities –
- (a) whether or not they would otherwise be capable of being transferred;
 - (b) without any instrument or other formality being required;
 - (c) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.

Continuity between the LBRO company and LBRO

- 3 (1) Anything done by or in relation to the LBRO company which has effect immediately before the day on which section 2 comes into force is, so far as is necessary for continuing its effect on or after that day, to have effect as if done by or in relation to LBRO.
- (2) If before the day on which section 2 comes into force any consultation was undertaken by the LBRO company which, had it been undertaken by LBRO on or after that day, would to any extent have satisfied any consultation requirement to which LBRO is subject, that requirement may to that extent be taken to have been satisfied.
- 4 Anything (including legal proceedings) which, immediately before the day on which section 2 comes into force, is in the process of being done by or in relation to the LBRO company may be continued by or in relation to LBRO.
- 5 So far as is necessary or appropriate in consequence of paragraph 2, on and after the day on which section 2 comes into force, a reference to the LBRO company in an enactment, instrument or other document is to be treated as a reference to LBRO.

SCHEDULE 3

Section 20(2)

DESIGNATED REGULATORS

British Hallmarking Council

British Potato Council

Charity Commission for England and Wales

Civil Aviation Authority

Coal Authority

Competition Commission
 Disability Rights Commission
 Environment Agency
 Equal Opportunities Commission
 Financial Services Authority
 Fire and rescue authorities
 Food Standards Agency
 Football Licensing Authority
 Forestry Commissioners
 Gambling Commission
 Gangmasters Licensing Authority
 Health and Safety Executive
 Hearing Aid Council
 Historic Buildings and Monuments Commission for England (“English Heritage”)
 Home-Grown Cereals Authority
 Housing Corporation
 Human Fertilisation and Embryology Authority
 Information Commissioner
 Natural England
 Office of Fair Trading
 Office of Rail Regulation
 Pensions Regulator
 Sea Fish Industry Authority
 Security Industry Authority
 United Kingdom Sports Council

SCHEDULE 4

Section 20(2)

DESIGNATED ENACTMENTS

Animal health and welfare

Animal Boarding Establishments Act 1963 (c. 43), section 1(8)
 Breeding of Dogs Act 1973 (c. 60)
 Animal Health Act 1981 (c. 22)
 Animals (Scientific Procedures) Act 1986 (c. 14)

Breeding of Dogs Act 1991 (c. 64)
Animal Welfare Act 2006 (c. 45)

Fish and fisheries

Diseases of Fish Act 1937 (c. 33)
Sea Fisheries (Shellfish) Act 1967 (c. 83)
Sea Fish (Conservation) Act 1967 (c. 84)
Salmon and Freshwater Fisheries Act 1975 (c. 51)
Import of Live Fish (England and Wales) Act 1980 (c. 27), section 3
Salmon Act 1986 (c. 62), section 32(1)

Water

Water Industry Act 1991 (c. 56), sections 70(1), 86, 109, 111 and 118

Environment

Agriculture and Horticulture Act 1964 (c. 28), sections 14 and 15
Agriculture Act 1967 (c. 22), section 14(2)
Mines and Quarries (Tips) Act 1969 (c. 10), Part 2
Agriculture Act 1970 (c. 40), Part 4 and section 106
Control of Pollution Act 1974 (c. 40), Part 3
Energy Act 1976 (c. 76), section 18
Refuse Disposal (Amenity) Act 1978 (c. 3), sections 2(1), 2B(2)
Wildlife and Countryside Act 1981 (c. 69), Parts 1 and 2
Litter Act 1983 (c. 35), section 5(9)
Food and Environment Protection Act 1985 (c. 48), section 9
Control of Pollution (Amendment) Act 1989 (c. 14), section 5
Environmental Protection Act 1990 (c. 43), section 23, Parts 2, 2A and 3,
and sections 118 and 150(5)
Environment Act 1995 (c. 25), section 110

Food standards and safety

Poisons Act 1972 (c. 66)
Food and Environment Protection Act 1985, sections 2 and 16 and
Schedule 2
Food Safety Act 1990 (c. 16), Parts 2 and 3
Food Standards Act 1999 (c. 28)

Public health and safety

Explosives Act 1875 (c. 17), sections 30 to 32, 43, 73 and 80
Public Health Act 1936 (c. 49), Part 2 and sections 269, 288 and 290
Prevention of Damage by Pests Act 1949 (c. 55), sections 3(4), 17, 22(4)
Health and Safety at Work etc. Act 1974 (c. 37), section 33
Safety of Sports Grounds Act 1975 (c. 52), section 12(1)
Dangerous Wild Animals Act 1976 (c. 38)
Public Health (Control of Disease) Act 1984 (c. 22), sections 15 to 55

Building Act 1984 (c. 55)
Clean Air Act 1993 (c. 11), Parts 1 to 6
Fireworks Act 2003 (c. 22), section 11

Housing

Rent Act 1977 (c. 42), sections 77 and 81
Protection from Eviction Act 1977 (c. 43), section 1

Planning

Town and Country Planning Act 1990 (c. 8), sections 65 and 106, Parts 7 and 8, sections 325 and 330
Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9), sections 9 and 43
Planning (Hazardous Substances) Act 1990 (c. 10), section 23

Road transport

Highways Act 1980 (c. 66), Part 9
Road Traffic Act 1988 (c. 52), sections 27(1), 123, 133C and 133D
New Roads and Street Works Act 1991 (c. 22), section 51
Transport Act 2000 (c. 38), sections 143 and 148 and Part 3

Marine transport

Protection of Wrecks Act 1973 (c. 33)
Pilotage Act 1987 (c. 21)
Merchant Shipping Act 1995 (c. 21), Parts 1 to 5 and 9 to 11

Anti-social behaviour

Criminal Justice and Public Order Act 1994 (c. 33), sections 77(3) and 78(4)
Noise Act 1996 (c. 37)
Anti-social Behaviour Act 2003 (c. 38), sections 54 and 75
Clean Neighbourhoods and Environment Act 2005 (c. 16), sections 3 to 7 and Part 7

Licensing

Local Government (Miscellaneous Provisions) Act 1976 (c. 57), Part 2
Local Government (Miscellaneous Provisions) Act 1982 (c. 30), Part 8, Schedules 3 and 4
London Local Authorities Act 1995 (c. x), sections 24 and 25
Licensing Act 2003 (c. 17), Part 7
London Local Authorities Act 2004 (c. i), sections 22, 26 and 29

Children

Children and Young Persons Act 1933 (c. 12), section 7(1)
Children and Young Persons Act 1963 (c. 37), section 40
Intoxicating Substances (Supply) Act 1985 (c. 26), section 1

Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23)

Education

Education Reform Act 1988 (c. 40), section 214

Companies

Companies Act 1985 (c. 6), sections 242 and 363

Companies Act 1989 (c. 40), section 41

Intellectual property

Copyright, Designs and Patents Act 1988 (c. 48), sections 107 and 198

Trade Marks Act 1994 (c. 26), section 92

Consumer protection

Petroleum (Consolidation) Act 1928 (c. 32), sections 1, 5 and 18

Accommodation Agencies Act 1953 (c. 23), section 1

Mock Auctions Act 1961 (c. 47)

Scrap Metal Dealers Act 1964 (c. 69), sections 1 and 5

Trade Descriptions Act 1968 (c. 29)

Medicines Act 1968 (c. 67), sections 67, 91, 93(1) and 94(2)

Administration of Justice Act 1970 (c. 31), section 40

Unsolicited Goods and Services Act 1971 (c. 30), section 2

Fair Trading Act 1973 (c. 41), sections 23, 30 and 120

Hallmarking Act 1973 (c. 43), sections 1, 3 and 6

Prices Act 1974 (c. 24)

Consumer Credit Act 1974 (c. 39), Parts 1 to 3, 6 to 8, 10 and 11

Business Names Act 1985 (c. 7), section 7

Food and Environment Protection Act 1985 (c. 48), section 16

Consumer Protection Act 1987 (c. 43), section 20

Timeshare Act 1992 (c. 35)

Sunday Trading Act 1994 (c. 20)

Criminal Justice and Public Order Act 1994 (c. 33), sections 166 and 167

Enterprise Act 2002 (c. 40), section 227E

Weights and measures

Weights and Measures Act 1985 (c. 72), Parts 2 to 6

Estate agents

Estate Agents Act 1979 (c. 38)

Property Misdescriptions Act 1991 (c. 29)

Employment agencies

Employment Agencies Act 1973 (c. 35), sections 5(2), 6(2), and 10(2)

Entertainment

Video Recordings Act 1984 (c. 39), sections 9 to 14

REGULATORY ENFORCEMENT AND SANCTIONS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Regulatory Enforcement and Sanctions Bill. They have been prepared by the Cabinet Office in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. *The Hampton Review, Reducing Administrative Burdens: Effective Inspection and Enforcement, March 2005* (“the Hampton Review”) set out a vision for a risk-based approach to regulation and included a set of principles for regulatory inspection and enforcement, based around risk and proportionality, as well as a major streamlining of regulatory structures. The Government has committed to implementing the Hampton Review agenda and this Bill is a further element in delivering on that commitment. The Government’s intention to legislate in this area was heralded in the 2005 Pre-Budget Report and the Bill will facilitate more consistent, targeted and effective regulatory enforcement through the establishment of the Local Better Regulation Office and by enabling Ministers to confer new civil sanctioning powers on regulators.
4. The Bill comprises two key parts: Part 1 provides for the establishment of a statutory corporation known as the Local Better Regulation Office (“LBRO”) and makes provision about its objectives and functions; Part 2 provides for the introduction of a new, expanded framework for regulatory sanctions by enabling Ministers to confer new civil sanctioning powers on regulators in relation to specific offences.
5. *The Macrory Review (Regulatory justice: Making sanctions effective, November 2006)*, (“the Macrory Review”) took forward the findings of the Hampton Review and made recommendations aimed at ensuring that regulators have access to a flexible set of sanctioning tools that are consistent with the risk-based approach to enforcement outlined in the Hampton Review. Currently, many regulators are heavily reliant on one tool, namely, criminal prosecution, as the main sanction should industry or individuals fail to comply with regulatory requirements. This Bill intends to make

These notes refer to the Regulatory Enforcement and Sanctions Bill

available more flexible and risk-based tools with the aim of achieving better regulatory outcomes. Professor Macrory's recommendations included:

- The Government should consider empowering regulators to apply fixed and variable monetary penalties where there has been a regulatory breach;
 - Statutory notice schemes, under which persons are generally alerted to regulatory breaches and ordered to take or refrain from taking a particular type of action, are not available to all regulators and where they are available, are often not used. The Government should consider improving current statutory notice regimes and extending them to those regulators that do not currently have them; and
 - The Government should consider introducing enforceable undertakings as an alternative to criminal prosecution whereby the person in breach enters into a legally binding agreement with the regulator to carry out specific activities to rectify its non-compliance.
6. Part 2 of the Bill responds to the Macrory Review recommendations by enabling Ministers to confer on regulators sanctioning powers as follows:
- fixed monetary penalties;
 - discretionary requirements – these are equivalent to what were in the Macrory Report called variable monetary penalties, statutory notices and “undertakings plus”; and
 - enforcement undertakings
7. The sanctioning powers may be conferred on specified regulators by Ministers in respect of particular criminal offences and the Bill sets out some minimum requirements for implementation of the new sanctions.
8. Part 3 of the Bill contains the general provisions.

TERRITORIAL EXTENT

9. Part 1 of the Bill extends to England and Wales only. Part 2 of the Bill extends to England and Wales, Scotland and Northern Ireland.

TERRITORIAL APPLICATION: WALES

10. Under Part 1, in respect of Wales, LBRO has the power under clause 7 to furnish advice or make proposals to Welsh Ministers regarding the way in which local authorities exercise their regulatory functions in relation to any matter in respect of which Welsh Ministers exercise functions. Clause 18 of the Bill also provides that

Welsh Ministers may give LBRO guidance and directions as to the exercise of its functions in relation to any matter in respect of which the Welsh Ministers exercise functions.

11. Under Part 2, clauses 38 and 39 provide that orders cannot be used to grant regulators sanctioning powers for offences that relate to matters that have been devolved to the Scottish or Northern Irish administrations. Clause 40 provides that the powers given to Ministers of the Crown in the Bill can also be used by Welsh Ministers in relation to matters that affect Wales and Ministers of the Crown must consult with Welsh Ministers before making an order under the Bill that will affect the sanctioning of an offence that applies in or relates to Wales.

COMMENTARY ON SECTIONS

PART 1: REGULATORY ENFORCEMENT BY LOCAL AUTHORITIES

The Local Better Regulation Office

Clause 1: Establishment of LBRO

12. Clause 1 establishes the corporate body to be known as the Local Better Regulation Office (LBRO).
13. Schedule 1 makes further provision about LBRO's constitution as well as other matters relating to its proceedings, accounts etc. Schedule 1 also makes provision for the LBRO to be added to provisions in other Acts, for example, LBRO's records are deemed public records by addition to the Public Records Act 1958.

Clause 2: Dissolution of the LBRO company

14. Prior to Part 1 of the Bill coming into force, there will be a non-departmental public body of the same name ("the LBRO company"), which will be constituted as a private company limited by guarantee. On coming into force, the Bill will effect the dissolution of the LBRO company under clause 2, and the transfer the functions, staff and property of the LBRO company to a new statutory corporation. This means that immediately on clause 2 entering into force, the LBRO company is dissolved. Subsection (3) gives effect to Schedule 2 which provides for the automatic transfer of staff, property, rights and liabilities from the LBRO company to LBRO. The transfers of property and staff take place immediately before the dissolution of the LBRO company.
15. Paragraph 1 of Schedule 2 provides that the transfer should be treated as if it were a transfer of an undertaking to which Transfer of Undertakings (Protection and Employment) Regulations 2006 applies. Paragraphs 3 to 5 ensure continuity, such that things done by the LBRO company immediately before it is dissolved have effect as if done by LBRO. For example, if the LBRO company initiates consultations with persons who are affected by a particular type of trading standards regulations with a

view to improving the effectiveness of enforcement, those consultations would satisfy the requirements of clause 4(4), which requires LBRO to consult before giving guidance to local authorities.

General functions of LBRO

Clause 3: Objective

16. Clause 3 sets out LBRO's objective. This is that LBRO must, when carrying out its general functions under clauses 4 to 6, seek to secure that local authorities exercise their relevant functions effectively, in a way that does not give rise to unnecessary burdens and in a way which conforms with the Better Regulation Commission's Principles of Good Regulation. Those principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and should be targeted only at cases in which action is needed.
17. "Relevant function" has not yet been defined for the purposes of the Bill as it is subject to consultation. It is intended that it will include functions carried out by local authorities under enactments relating to environmental health or trading standards (to be listed in a schedule to the Bill) to include all functions carried out by local authorities in respect of environmental health and trading standards such as providing advice to regulated persons on good practice.

Clause 4: Guidance to local authorities

18. Under clause 4 LBRO has the function of giving guidance to local authorities as to how they should exercise their relevant functions. Guidance issued under clause 4 may be given to one or more local authorities and may relate to one or more relevant functions. This means that LBRO could, for example, give guidance to a single local authority about how often it should be carrying out inspections of premises of a certain type or more general guidance relevant to all authorities on how to enforce specific pieces of legislation or areas of regulation where there might be a lack of clarity or where other guidance, including statutory guidance, is unclear. LBRO may also issue guidance relating to the way in which a local authority exercises its functions in a particular case. This means that LBRO could, for example, issue guidance to a local authority about the way in which it is enforcing trading standards rules in respect of a particular business. Local authorities are required to have regard to guidance issued by LBRO under this clause.
19. Before giving guidance, LBRO must consult those persons likely to be affected by the exercise of that function or persons or bodies representative of such persons. LBRO must also consult any other persons it considers to be appropriate. These are likely to include businesses and other bodies that are subject to regulation, any relevant regulators, and relevant representative bodies such as the Trading Standards Institute or the Chartered Institute of Environmental Health.

Clause 5: Financial support and assistance to local authorities

20. Clause 5 allows LBRO to provide financial support to local authorities in relation to the exercise of their relevant functions. For example, where a local authority considers itself unable, due to resourcing constraints, to agree to act as primary authority for a regulated person in respect of a relevant function under clause 9, LBRO may agree to provide the authority with support so that it can undertake the primary authority role.

Clause 6: Advice to Ministers

21. Under subsection (1) LBRO can provide advice or make proposals to a Minister of the Crown in respect of the way that local authorities exercise their relevant functions, the effectiveness of legislation relating to the exercise of those functions, and whether it would be appropriate for any other regulatory functions to be exercised by local authorities. If a Minister requests advice or proposals on these matters from LBRO, then LBRO is obliged to provide such advice or make such proposals.
22. Subsections (3) and (4) confer an equivalent power and equivalent requirements on LBRO with regard to Welsh Ministers in relation to any matter in respect of which they exercise functions.

Enforcement priorities

Clause 7: List of enforcement priorities

23. Subsection (1) requires LBRO to prepare and publish a list specifying the matters in relation to which local authorities should give priority in allocating resources. Examples of the matters which LBRO might include in its list of priorities might be: (i) air quality and the regulation of pollution from factories and homes; (ii) alcohol, entertainment and enforcement of late night licensing; and (iii) trade description, trade marking, mis-description and door step selling. Local authorities are required to have regard to the list of priorities when deciding what level of resources to allocate to which relevant function when carrying out their relevant functions.
24. Subsection (2) requires LBRO to review the list of priorities either on its own initiative or if requested to do so by a Minister of the Crown. Subsections (3) to (5) require LBRO to publish the list and any revised list of priorities and set out the procedure that LBRO should follow in doing so including publishing the details of any representations made to it as a result of consultation undertaken prior to publishing the list.

Co-ordination of regulatory enforcement

Clause 8: Primary authorities

25. This clause allows a regulated person that is subject to regulation by more than one local authority in respect of a relevant function to agree with one local authority that it should be the primary authority when carrying out regulation of that regulated person in respect of that function. This is intended to secure improved regulatory consistency and coordination and would allow, for example, a business which has premises in four different local authority areas which are subject to health and safety regulation by each authority, to agree with one of those four authorities, or with another local authority in a different area which regulates health and safety, that it shall be the primary authority for that business in regulating health and safety for all of its premises. The primary authority would then have a number of functions, including the right to refuse to consent to other authorities taking enforcement action in respect of health and safety for the business in question. The functions of primary authorities are set out in clauses 9 to 13.
26. Where a regulated person wishes to establish a primary authority relationship but has not been able to do so for any reason, subsections (3) to (6) empower LBRO, on the application of the regulated person in question, to nominate a local authority to be the primary authority in respect of the relevant function. Subsection (4) provides guidance to LBRO on which authorities might be suitable candidates to be primary authorities in respect of a relevant function for a regulated person. For example, where a business has its head office in one local authority area and operational premises in a number of different local authority areas, subsection (4) suggests that LBRO may choose to nominate as a primary authority either the authority in whose area the most significant operational premises are located, or the authority in whose area the head office is located. These are likely to be the local authorities that have already been exercising relevant functions in respect of the regulated person and are therefore most likely to be familiar with it. It may be that LBRO nominates one local authority as the primary authority in respect of one relevant function for the business in question, for example trading standards matters, and a different authority in respect of another relevant function, for example environmental health matters.
27. Subsection (5) requires LBRO to consult with the regulated person making the application and the authority that it proposes to nominate as the primary authority, before nominating a local authority.
28. Subsection (6) requires LBRO to pay particular regard to any representations made by the proposed primary authority regarding the resources available to it. This seeks to avoid a situation in which local authorities with insufficient or inappropriate resources end up being ineffective primary authorities.

Clause 9: Advisory function of primary authorities

29. This clause charges the primary authority with the task of giving advice both to the regulated person in respect of the relevant function, and to other local authorities regarding how they should exercise the relevant function in relation to the regulated person. The primary authority and regulated person may make such arrangements as they see fit in order to manage their relationship. This might include entering into an agreement or memorandum of understanding which sets out the rights and obligations of each party. Such agreement or memorandum might supplement any plan agreed under clause 13.

Clause 10: Enforcement action: requirement to obtain consent

30. Clause 10 requires a local authority, where it considers that a regulated person is or may be in breach of a regulatory requirement, to secure the consent of the primary authority with whom the regulated person has a relationship before taking enforcement action in respect of the breach. Where a local authority wishes to take enforcement action in respect of a particular regulated person but the primary authority does not consent to the action, then the authority that wishes to take action is precluded from taking the action unless LBRO consents to its doing so on a reference under clause 11. Enforcement action is action taken in relation to a breach of a restriction, requirement or condition and does not apply to all activity undertaken by local authorities in relation to regulatory enforcement. It does not, for example, cover the routine inspection of regulated persons but would include the serving of a “warning letter” notifying a regulated person of intention to commence proceedings in respect of a suspected breach of regulatory requirements. If the local authority for one of the areas in which the business has premises suspects that there has been a breach of the rules governing health and safety at work for which it has enforcement responsibility, but it is not the primary authority, it would need to consult with and obtain the consent of the primary authority before taking any action with a view to remedying the suspected breach. There would be no requirement to consult with and obtain the consent of the primary authority before undertaking an inspection or otherwise checking compliance where there had not been a suspected breach because that would not be enforcement action.
31. There is a limited exception to the requirement that local authorities consult with and obtain consent from a primary authority before taking enforcement action: where a local authority considers there to be an imminent risk of serious harm to human health or to the environment, including harm to the health of animals and plants, that authority may take enforcement action without consulting with or obtaining the consent of the primary authority. Subsection (6) stipulates that where a local authority does take enforcement action against a regulated person under these circumstances it must inform the primary authority of the enforcement action as soon as it reasonably can.

Clause 11: Enforcement action: procedure for obtaining consent

32. Clause 11 sets out the procedure by which local authorities obtain consent from a

primary authority, or where the primary authority does not consent, from LBRO, when they propose to take enforcement action against a regulated person.

33. In determining whether or not to consent to proposed enforcement action by a local authority, the primary authority is required to consider whether or not the enforcement action proposed by the local authority is appropriate in all circumstances. For example, enforcement action might not be appropriate if a regulated person has committed a technical breach of regulations without any deleterious effects and the breach has been remedied. If it is appropriate, then the primary authority shall consent to the proposed action; if it is not appropriate then the primary authority shall not consent to the proposed action. Where the primary authority does not consent, then the local authority that is seeking to take the enforcement action may refer the matter to LBRO. If LBRO does not agree with the primary authority's determination, it shall consent to the proposed enforcement action.
34. Where a primary authority does not give consent to a local authority proposing enforcement action against a regulated person, the local authority can refer the case to LBRO under the provisions in subsection (3). If the primary authority does not consent to the proposed enforcement action, and on a reference to LBRO, LBRO also does not consent to the enforcement action, then the local authority is precluded from taking the action.
35. Where a primary authority consents to a proposed enforcement action, the regulated person against whom the enforcement action is to be taken may refer the action to LBRO if: by consenting to the proposed enforcement action the primary authority is contradicting advice it has previously given to the regulated person; and, if LBRO consents to the referral. If LBRO does not agree with the primary authority's determination, it shall cancel the consent and the local authority will be precluded from taking the action.
36. Subsection (7) allows a primary authority to refer a matter relating to proposed enforcement action to LBRO for determination instead of making a determination itself. Subsection (8) allows the regulated person or the enforcing authority to refer a matter relating to proposed enforcement action to LBRO, with LBRO's consent, if the primary authority has failed within a reasonable time to make a determination or to refer the action to LBRO. It will be for LBRO to decide how long it should reasonably take for a primary authority to make a determination or to refer an action to LBRO. In deciding any matter referred to it under subsections (7) or (8), LBRO shall consent to the proposed enforcement action if it considers it to be appropriate in all the circumstances and it shall not consent where it is not considered to be appropriate.
37. Under subsection (11), where LBRO has cancelled the consent of the primary authority, or does not consent to enforcement action on a reference to it under subsections (7) or (8), but it recommends that some other enforcement action should be taken, then the enforcing authority need not go through the procedure of consulting

with and obtaining the consent of the primary authority before taking the enforcement action that LBRO has recommended.

38. Subsection 12 enables LBRO to delegate its functions under this clause to other appropriate persons. These might include regulatory bodies with specific relevant expertise.

Clause 12: Enforcement action: guidance and directions

39. Subsection (1) confers power on LBRO to give guidance or directions to one or more local authorities regarding any enforcement action that has been referred to it under the provisions of clause 11. This is intended to be distinct from LBRO's general function of giving guidance under clause 4 and will allow LBRO to issue guidance in relation to a particular case that has been referred to it under the provisions of clause 10.
40. Local authorities are obliged to have regard to any guidance and to comply with any directions made by LBRO under subsection (1).

Clause 13: Inspection plans

41. This clause makes provision for primary authorities to draw up inspection plans in respect of the regulated person with whom they have a relationship which includes the function of inspection. These inspection plans are intended to act as a guide for other local authorities who also carry out inspections in relation to that person. The plans may set out the circumstance under which inspection can take place, how frequent inspections can be and what an inspection should consist of in relation to a particular regulated person. Primary authorities are required bring any inspection plan to the notice of other relevant local authorities.
42. Subsection (4) requires local authorities to have regard to an inspection plan that has been brought to its attention when proposing to inspect the regulated person in question. Subsection (5) requires local authorities to consult with the primary authority if it proposes to inspect a regulated person in a manner that is not in accordance with the inspection plan.

Co-ordination: supplementary

Clause 14: LBRO support of primary authorities

43. Clause 14 confers powers on LBRO to do anything it considers appropriate, including making grants, to support a primary authority in the exercise of its functions as set out under clauses 9 to 13.

Clause 15: LBRO guidance

44. Under this clause, LBRO can give guidance to local authorities about the operation of clauses 8 to 13. In particular, LBRO can give guidance to primary authorities regarding the agreements made with a regulated person under clause 9(2). Subsection (3) requires local authorities to have regard to any guidance issued by LBRO under clause 15. Guidance under this clause differs from the general guidance that will be given under clause 4, and guidance under clause 12 as it applies specifically to guidance issued to primary authorities about how they might operate their relationships under clause 8.
45. Subsection (4) requires LBRO to consult with those persons it considers to be appropriate before giving guidance under subsection (1). LBRO is also required, under subsection (5) to publish any guidance it issues under subsection (1).

Ministerial powers

Clause 16: Guidance or directions by the Minister for the Cabinet Office

46. Subsection (1) confers on the Minister for the Cabinet Office the power to give LBRO guidance and general and specific directions as to the exercise of its functions. LBRO is required to have regard to the guidance and, comply with any directions made under this clause. Whilst LBRO is intended to operate free from Ministerial interference in its day to day affairs, the Minister may need to issue guidance LBRO if it is discharging its functions in a manner that is at odds with its intended purpose. Clause 17 includes an equivalent power for Welsh Ministers in relation to matters in respect of which they exercise functions.

Supplementary and general

Clause 18: Power to dissolve LBRO

47. Clause 18 confers power on the Minister for the Cabinet Office to make provision by order for the dissolution of LBRO. This is because it is envisaged that in the future LBRO will have achieved its objective and therefore, it will no longer be needed. The clause specifies that the order may, among other things, provide for the transfer of functions, property, rights or liabilities of LBRO to another person.

PART 2: REGULATORY SANCTIONS

Clause 20 (“Regulator” and “Relevant Offence”), Schedule 3 and Schedule 4

48. Clause 20 sets out the definition of a “regulator”, “designated regulator”,

“designated enactment”, “enforcement function” and “relevant offence”. The Bill confers powers to enable “regulators” to have civil sanctioning powers for certain offences. The powers can only be used to confer power on a “regulator” and in relation to an offence which is a “relevant offence” for that regulator. This clause sets out what is meant by “regulator” and “relevant offence”.

49. A “regulator” is a body that is listed at Schedule 3 to the Bill or is a body who exercises an enforcement function in relation to an offence under enactments listed at Schedule 4. These bodies will be allowed to use the new sanctions contained in this Bill once the Minister has passed secondary legislation to grant them the relevant powers. The Minister will decide which relevant offences should be covered.
50. The first group of regulators are those listed at Schedule 3. For these regulators, “relevant offence” means an offence in relation to which the regulator has an enforcement function. “Enforcement function” is defined at subsection (2). An example of an enforcement function is where the regulator investigates whether there has been an incident of regulatory non-compliance.
51. The second group of regulators are those bodies with an enforcement function (defined at subsection (2)) in relation to an offence under a “designated enactment” listed at Schedule 4. This group will largely consist of local authority and Ministerial regulatory functions. For these regulators, “relevant offence” means an offence which is contained in the enactments listed at Schedule 4 in relation to which the regulator has an enforcement function.

Clause 21: Power to enable regulators to impose fixed monetary penalties

52. This clause enables a Minister of the Crown to grant a “regulator” (see definition in clause 20) the power to issue a fixed monetary penalty where the regulator is satisfied that regulatory non-compliance which constitutes a “relevant offence” (see definition in clause 20) has taken place.
53. It is the regulator, and not the Minister, who imposes the fixed monetary penalty on the person who has committed the regulatory non-compliance (called the “defaulter”).
54. A fixed monetary penalty is a penalty whose amount is specified by the order made under this clause or is calculated by reference to criteria specified in that order. For example, the level of the fixed monetary penalty could differ according to whether the person liable is an individual or a body corporate. The amount of the fixed monetary penalty imposed in any individual case will not involve the exercise of discretion by the regulator.
55. Where the relevant offence is one which is triable summarily only, that is where the accused is not entitled to trial by jury, the order will not be able to specify a level of

fixed penalty that is more than the maximum fine available for that offence. For all other criminal offences, there is no maximum limit to the amount of fixed monetary penalty that can be imposed by or under the order.

56. Subsection (6) enables Ministers to set out whether the evidential standard that should be met by the regulator before it can impose a fixed monetary penalty should be the balance of probabilities or beyond reasonable doubt.

Clause 22: Fixed monetary penalties: procedure

57. Clause 24 requires the order implementing fixed monetary penalties to secure specified results. These results concern the requirements and procedure that a regulator must comply with when imposing a fixed monetary penalty.
58. The results that the order implementing fixed monetary penalties must secure are: that the regulator must issue a penalty notice requiring payment of a fixed monetary penalty that is in accordance with the requirements at subsection (3); that defences contained in any enactment containing the relevant offence (see definition in clause 20) are extended to the defaulter (see definition at clause 21(2)) as a defence to the imposition of the fixed monetary penalty; that there is a review of the penalty notice by the regulator on request of the defaulter; that the regulator may withdraw or confirm the penalty following its review and must give reasons for its decision; and that the defaulter is able to appeal against the decision of the regulator to confirm the penalty.
59. Pursuant to subsection (3), the regulator must issue a notice to the defaulter which must include information stating the circumstances of the alleged offence, the defences available, the amount of the fixed monetary penalty and the defaulter's rights of review and appeal. The notice must give detail of how the defaulter can pay the penalty and by when any payment must be made. In addition, the notice must also contain details of any late payment penalties or early payment discounts.
60. The order must secure that the defaulter will be able to rely on the same statutory defences that would be available to them on a prosecution for the underlying offence. It is also intended that the order will be able to secure that the defaulter will be able to use any common law defences which are not set out under statute but which also may be relevant to the circumstances of the regulatory non-compliance. This is not currently provided for in the Bill.
61. The order must secure that the defaulter, following receipt of the penalty notice, is able to request that the regulator reviews the imposition of the penalty. The exact process of any internal review is left to be set out by the Minister in the order. Any internal review must take place within a period of no more than 28 days from when

the defaulter's notice requiring the review is received by the regulator.

Clause 23: Fixed monetary penalties: effect

62. This clause requires that the order implementing fixed monetary penalties for regulators must secure that the imposition of a fixed monetary penalty, as provided for by clause 21, removes the liability to criminal prosecution or to any sanction which could be imposed under clause 24.
63. The order will allow a regulator to recover any fixed monetary penalty issued, and any additional late payment charges that are relevant, as a civil debt recoverable through the courts (see clause 41).

Clause 24: Power to enable regulators to impose discretionary requirements

64. This clause enables a Minister of the Crown to grant a “regulator” (see definition in clause 20) the power to impose on a person a requirement by way of a notice where the regulator is satisfied that regulatory non-compliance which constitutes a “relevant offence” (see definition in clause 20) has taken place.
65. This clause enables the following requirements to be to be imposed on a “defaulter” (see definition in subsection (2)) by the regulator:
 - The payment of a monetary penalty of an amount that the regulator will determine;
 - To take steps within a specific time period that ensure that the incident of non-compliance does not continue or recur;
 - To take steps that restore the position, as far as possible, to the way it would have been had the non-compliance not taken place.
66. Subsection (6) enables Ministers to set out whether the evidential standard that should be met by the regulator before it can impose a discretionary requirement should be the balance of probabilities or beyond reasonable doubt.

Clause 25: Discretionary requirements: procedure

67. This clause sets out the results that the order granting a “regulator” (see definition in clause 20) the power to impose discretionary requirements under clause 24 must achieve. These results concern the requirements and procedure that a regulator must

comply with when imposing a discretionary requirement. The results are that:

- The regulator must serve a notice on the defaulter telling it that the regulator proposes to impose discretionary requirements on the defaulter. That notice must contain (as stipulated in subsection (3)) information about the grounds for imposing the discretionary requirements, the defences available, the defaulter's right to make representations and objections to the regulator and the time within which to make such representations and objections (which cannot be less than 28 days from receipt of the notice);
- The defaulter will be able to rely on the same statutory defences that would be available to it on a prosecution for the underlying offence. It is also intended that the defaulter will also be able to use any common law defences which are not set out under statute but which also may be relevant to the circumstances of the regulatory non-compliance and provision in the Bill will be made for this in due course;
- The defaulter can make written representations and objections to the regulator about the Discretionary Requirement;
- After the end of the time for making representations and objections the regulator can then decide whether to impose, withdraw or vary the Discretionary Requirement or replace the requirement with a different Discretionary Requirement;
- Where the regulator decides to impose a Discretionary Requirement, it must be done by way of a notice. The notice must contain the information set out in subsection (4) of this clause about:
 - the grounds for imposing the discretionary requirement;
 - where the requirement is to pay a monetary penalty, how payment may be made;
 - where the requirement is to pay a monetary penalty, the period within which payment must be made, such period being no less than 28 days from the date the notice is received by the defaulter;
 - any early payment discounts or late payment penalties;
 - the defaulter's rights of appeal;
 - the consequences of non-compliance.

Clause 26: Discretionary requirements: voluntary undertakings

68. This clause enables a Minister of the Crown when making provision under clause 24 to make further provision that enables a regulator to accept undertakings from a defaulter after a notice of intent to impose a variable monetary penalty has been served (as described in clause 25(2) (a)) and before a final penalty notice has been served (as described in clause 25(2) (d)).
69. This clause further enables provision to be made that a regulator takes into account such undertakings when determining what the amount of the monetary penalty or other discretionary requirement (see clause 24(4)(a)) will be.
70. The undertakings offered will cover the same type of actions as those under Enforcement Undertakings (see clause 34(4)). These actions are those that ensure that the defaulter does not repeat or continue its non-compliant actions, those that restore the position, as far as possible, to what it would have been had the non-compliant action not taken place, and those that benefit any person affected by the non-compliant actions of the defaulter (including payment of money).

Clause 27: Discretionary requirements: effect

71. Clause 27 requires the order which grants a regulator the power to impose discretionary requirements to secure the results specified in this clause concerning the effect and enforcement of those requirements.
72. Under subsection (2)(a), where the defaulter has been required to pay a monetary penalty but no other penalty, the order must secure that the defaulter may not be later criminally prosecuted or receive a notice for a fixed monetary penalty (under clause 21) or for a discretionary requirement (under clause 24) for the same incident of regulatory non-compliance. Thus, if a defaulter has had a notice requiring payment of a monetary penalty imposed on it, that defaulter cannot have another sanction, criminal or otherwise, imposed for the same incident of regulatory non-compliance at a later date. Failure to pay the monetary penalty to the regulator can lead to the regulator recovering the amount due through civil debt procedures (see clause 41).
73. Where the defaulter has had another type of discretionary requirement imposed on it (with or without a monetary penalty), the order must secure that the defaulter may not be later criminally prosecuted or receive a notice for a fixed monetary penalty (under clause 21) or for a discretionary requirement (under clause 24) for the same incident of regulatory non-compliance *unless* he has failed to comply with that discretionary requirement. Thus, if a defaulter has received, for example, a notice requiring them to take certain action, failure to comply with the notice makes the defaulter liable once more for criminal prosecution or some other sanction under clause 24, e.g. a variable monetary penalty, for the same instance of regulatory non-compliance. Time limits for criminal prosecution can be extended under the power in subsection (3).

74. Where the defaulter has offered and has had accepted voluntary undertakings (under clause 26) in combination with a monetary penalty or some other discretionary requirement under clause 24, the provisions at subsections (2)(a) and (2)(b) still apply. Where voluntary undertakings have been accepted and no other penalty or requirement imposed, the provisions at subsection (2)(b) apply.
75. Under subsection (4), the order shall also secure that defaulter is liable to a monetary penalty for failure to comply with discretionary requirements (where these requirements do not consist of a requirement to pay a monetary penalty under clause 24) or voluntary undertakings. This will result in the regulator, when confronted with a failure to comply with a discretionary requirement or voluntary undertaking, having the options of criminally prosecuting for the relevant offence (see definition in section 20), using the powers in clause 24 of this Bill to impose discretionary requirements for the relevant offence, or using the power under this subsection to impose a monetary penalty for failure to comply with the requirement or undertaking. The order making provision for the monetary penalty for failure to comply with discretionary requirements or voluntary undertakings must require, under subsection (5) that the regulator must issue a notice requiring payment of the penalty and must secure that the defaulter is able to appeal against that notice. The order may also make provision for the matters set out in subsection (5). Failure to pay the monetary penalty to the regulator can lead to the regulator recovering the amount due through civil debt procedures (see clause 41).

Clause 28: Power to enable regulators to require permanent cessation of activity

76. This clause enables a Minister of the Crown to make provision in an order to enable a regulator (see definition in clause 20) to require that a defaulter cease an activity permanently through the use of a notice (“permanent cessation notice”). That activity might include a manufacturing process, use of a particular piece of equipment, or sale of a particular product.
77. In order for the regulator to be able to serve a permanent cessation notice three conditions need to be satisfied:
- The regulator is satisfied that the defaulter is carrying on an activity in such a way as to present a significant risk of serious harm to human health or the environment (including the health of animals or plants).
 - The regulator is satisfied that the defaulter is committing a relevant offence (see definition in clause 20) in carrying on that activity in that way; and
 - The defaulter has previously been convicted of that offence.

78. Under subsection (5), the Minister may make provision in the order to determine whether the standard of proof needed for the regulator to be satisfied before it can impose a permanent cessation notice is the balance of probabilities or beyond reasonable doubt.

Clause 29: Permanent cessation of activity: procedure

79. This clause sets out certain procedural requirements that the order must secure when granting a regulator the power to impose permanent cessation notices (see clause 28 explanatory note). The procedural requirements are:

- The regulator serves a notice on the defaulter telling it that the regulator intends to impose a permanent cessation notice. That notice must contain the information stipulated in subsection (3) about the grounds for imposing the permanent cessation notice, the defences available, the defaulter's right to make representations and objections to the regulator and the time within which to make such representations and objections (which cannot be less than 28 days from the day on which the notice is received by the defaulter);
- The defaulter will be able to rely on the same statutory defences that would be available to it on a prosecution for the underlying offence. It is also intended that the defaulter will be able to use any common law defences which are not set out under statute but which also may be relevant to the circumstances of the regulatory non-compliance and provision in the Bill will be made in due course;
- The defaulter can make written representations and objections to the regulator about the proposal to impose a permanent cessation notice;
- After the end of the time for making representations and objections the regulator can then decide whether to impose the permanent cessation notice;
- If the permanent cessation notice is served then it must contain information (set out in subsection (4) of this clause) about the activity which must cease and the date by which it must cease, the grounds for issuing the notice, the defaulter's rights of appeal and the consequences of non-compliance;
- The defaulter is able to appeal against the decision to impose the permanent cessation notice.

80. This clause also allows the Minister of the Crown to create compensation schemes for successful appellants or defaulters who have had the notice withdrawn by the

regulators.

Clause 30: Permanent cessation of activity: effect

81. Any order that empowers a regulator to impose permanent cessation notices (see definition in clause 29 explanatory note) must require those notices to be enforced through the use of a monetary penalty to the regulator if the defaulter fails to comply with the notice.
82. The monetary penalty to be paid if the defaulter fails to comply with the notice may be for a fixed or variable amount. Under subsection (2), the order will provide for whether the amount of monetary penalty will be fixed by the order, calculated according to criteria in the order, determined by the regulator or in some other way. This provision gives the Minister the flexibility to design the monetary penalty in a way that is suitable for the regulator and/or regulatory area. For example, the order might provide that the regulator can impose a daily penalty for every day that the permanent cessation notice is not complied with. Alternatively, the regulator might set the amount of penalty at the level of the profit made by the defaulter during the period of non-compliance.
83. In order to use this enforcement option the order must require the regulator to serve a notice on the defaulter requiring payment and must ensure that the defaulter is able to appeal against such a notice. The order will also provide more detailed provision as to the powers of the body hearing the appeal pursuant to the power under clause 42.

Clause 31: Power to enable regulators to require temporary cessation of activity

84. This clause gives a Minister of the Crown the power to make provision in an order to enable a regulator (see definition in clause 20) to require that a defaulter cease an activity for a period specified by the regulator through the use of a notice (“temporary cessation notice”). That activity might include a manufacturing process, use of a particular piece of equipment, or sale of a particular product.
85. A regulator will only be able to serve a temporary cessation notice when it has reasonable grounds to suspect that:
 - The defaulter in doing that activity presents a significant risk of serious harm to:
 - Human health;
 - The environment (including the health of animals and plants); or

- The financial interests of consumers; and
- The defaulter is committing a relevant offence (see definition in Clause 20) in doing that activity.

86. Temporary cessation notices are only valid for a maximum of six months.

Clause 32: Temporary cessation of activity: procedure

87. This clause sets out certain procedural requirements that the order must secure when granting a regulator the power to impose temporary cessation notices (see definition in clause 31 explanatory note). The procedural requirements are:

- The regulator serves a temporary cessation notice on the defaulter. That notice must contain information stipulated in subsection (3) about the activity which must cease and the date by which it must cease, the grounds for issuing the notice, the defences available, the defaulter's rights of appeal and the consequences of non-compliance;
- The defaulter will be able to rely on the same statutory defences that would be available to it on a prosecution for the underlying offence. It is also intended that the defaulter will be able to use any common law defences which are not set out under statute but which also may be relevant to the circumstances of the regulatory non-compliance and provision in the Bill will be made in due course;
- The defaulter may appeal against the notice. The order will also provide more detailed provision as to the powers of the body hearing the appeal pursuant to the power under clause 42.

88. This clause further enables the Minister, at subsection (6); to make provision for compensation schemes for successful appellants or defaulters who have had the notice withdrawn by the regulator.

Clause 33: Temporary cessation of activity: effect

89. Any order that empowers a regulator to impose temporary cessation notices (see definition in clause 31 explanatory note) must require those notices to be enforced through the use of a monetary penalty to the regulator if the defaulter fails to comply with the notice.

90. The monetary penalty to be paid if the defaulter fails to comply with the notice may be for a fixed or variable amount. Under subsection (2), the order will provide for whether the amount of monetary penalty will be fixed by the order, calculated according to criteria in the order, determined by the regulator or in some other way. This provision gives the Minister the flexibility to design the monetary penalty in a way that is suitable for the regulator and/or regulatory area. For example, the order might provide that the regulator can impose a daily penalty for every day that the temporary cessation notice is not complied with. Alternatively, the regulator might set the amount of penalty at the level of the profit made by the defaulter during the period of non-compliance.
91. In order to use this enforcement option, the order must require the regulator to serve a notice on the defaulter requiring payment and must ensure that the defaulter is able to appeal against such a notice. The order will also provide more detailed provision as to the powers of the body hearing the appeal pursuant to the power under clause 42.

Clause 34: Power to enable regulators to accept Enforcement Undertakings

92. Clause 34 enables a Minister of the Crown to make an order that allows a “regulator” (as defined in clause 20) to accept Enforcement Undertakings offered by a person (known as ‘the defaulter’). A regulator will not, by virtue of the clause, be able to impose enforcement undertakings. The clause merely enables undertakings to be accepted, if offered, with the results set out in the clause. So it would be for the defaulter to offer enforcement undertakings in a case where they are available.
93. An Enforcement Undertaking is defined in subsection (3) and is an undertaking or promise, offered by the defaulter, that the defaulter will take certain actions within the descriptions in subsection (4).
94. The regulator may only accept Enforcement Undertakings offered by the defaulter when the regulator has reasonable grounds for suspecting that an act or omission of the defaulter constitutes a “relevant offence” (see definition in clause 20). Once that Enforcement Undertaking is accepted the following consequences will flow from it:
- The defaulter may not be criminally prosecuted for the act or omission; and
 - The defaulter may not have another sanction from clauses 21 or 24 of this Bill imposed on it.
95. The consequences laid out in the previous paragraph will apply unless the defaulter fails to comply with the Enforcement Undertaking or it is deemed (pursuant to a provision made under subsections (6) (e) and (i)) to have failed to comply with the Undertaking. Where there is such non-compliance, the consequences will no longer

apply and the regulator will be able to criminally prosecute the defaulter or impose a different sanction from clauses 21 or 24 of this Bill.

96. Under subsection (4), the defaulter may offer the following type of action as part of its Enforcement Undertakings:

- Actions that ensure that the defaulter does not repeat or continue its non-compliant actions. For example, the defaulter may undertake to fix faulty equipment that breaches safety standards;
- Actions that restore the position, as far as possible, to what it would have been had the non-compliant action not taken place. For example, the defaulter may undertake to clean up an area that has been contaminated by its non-compliant actions; and
- Actions that benefit any person affected by the non-compliant actions of the defaulter (including payment of money). For example, the defaulter may set up a compensation scheme for victims of its non-compliance.

97. Subsection (6) enables the Minister when making the order to include provision for the following:

- The procedure for entering into the Enforcement Undertaking. This could be stipulated by order or left to be determined by the regulator.
- As to the terms of the Enforcement Undertaking. There may be some further detailed provision that a Minister might wish to set out when granting this power to a regulator. For example, the Minister may require that the Undertakings contain an admission that the regulatory non-compliance took place.
- Publication of the Enforcement Undertaking. The regulator may wish to publish the Enforcement Undertakings and the manner in which this is done and how this is available may be set out in the order.
- Variation of the Enforcement Undertaking. There may be occasions where either the regulator or the defaulter wants to vary the terms of an Enforcement Undertaking. The Minister may make provision in the order about the circumstances where the Enforcement Undertakings may be varied. For example, the order might provide that a defaulter may apply vary a term of the Enforcement Undertakings where there has been a change of circumstances.
- Compliance with the Enforcement Undertaking. The order may make provision as to circumstances that can be regarded as having complied with the Enforcement Undertaking. This enables the order to set out what compliance with the Enforcement Undertaking means, at what stage compliance will have

been deemed to happen and in what circumstances a regulator may wish to exercise their discretion to deem that compliance with the Enforcement Undertaking has taken place. For example, if a defaulter has been unable to comply with one element of the undertaking through circumstances outside its control, the order may allow for the regulator to deem the Enforcement Undertakings as having been completed.

- **Monitoring the Enforcement Undertaking.** The order may make provision on how the Enforcement Undertaking will be monitored by the regulator.
- **Certifying compliance with the Enforcement Undertaking.** This is the certification process that a regulator may use in certifying compliance with the Enforcement Undertaking. For example, the order might require the regulator to issue a letter confirming that the Enforcement Undertakings have been completed to its satisfaction and that this letter is published.
- **Consequences for providing misleading or inaccurate information.** The Minister will be enabled to set out in the order the consequences of the defaulter providing misleading or inaccurate information that forms the basis of an Enforcement Undertaking. An example of the type of consequences that might flow is where a regulator discovers, after acceptance of the undertakings, that the defaulter provided misleading information about the extent of its regulatory non-compliance, the order may deem that this constitutes a breach of the Enforcement Undertakings and that criminal liability for the relevant offence may revive (as provided for in subsection (5)).
- **Taking account of partial compliance.** The order is able to provide that, where an Enforcement Undertaking has been partly complied with, the part compliance should be taken into account in any criminal or other penalty relating to the act or omission upon which the Enforcement Undertaking is based. For example, if criminal liability revives by virtue of subsection (5), any partial compliance with the Enforcement Undertakings may be taken into account as a mitigating circumstance during sentencing.
- **Extension of prosecution time limits.** The order is able to make provision that extends time limits for criminal prosecution of relevant offences in order to allow a defaulter to be prosecuted in the event of non-compliance with Enforcement Undertakings.

Clause 35: Offences under subordinate legislation

98. This clause extends any power of a Minister of the Crown or Welsh Minister to create criminal offences in secondary legislation contained in the enactments listed at subsection (3) to include the powers to create alternative civil sanctions (e.g. Clauses

21, 24, 28, 31 and 34) under Part 2 of this Bill. This would allow the Minister, when, for example, amending or consolidating criminal offences contained in secondary legislation made under a listed enactment, to make provision for fixed monetary penalties for example (as under clause 21). This extended power may be used to create the civil sanction and any procedural requirements attaching to the exercise of that power will apply when the civil sanction is created. The power only extends to making any provision which could be made under Part 2 of the Bill and thus any substantive restrictions on the sanctions will apply when the extended power is used, for example, in relation to devolution.

99. This clause does not apply to powers to create criminal offences by secondary legislation which are enforced by “designated regulators” (as defined in clause 20).

Clause 36: Guidance as to use of powers under this Part

100. A Minister of the Crown may not make an order that gives a regulator the powers under this Bill unless the order requires the regulator to publish guidance in relation to the imposition of a sanction (under clauses 21, 24, 28 or 31) and the acceptance of undertakings (under clause 34) (“Penalty Guidance”). The order must also require that the regulator consults persons specified in the order (for example, persons affected by the new sanctioning powers) before publishing or revising the Penalty Guidance. The Penalty Guidance must also be revised by the regulator where appropriate, for example, where there has been a change in the rules. The order must stipulate that the regulator must have regard to the Penalty Guidance when exercising its functions.
101. The Penalty Guidance must contain information about the circumstances in which a sanction is likely to be imposed or undertakings accepted, the defences available to the defaulter, and the defaulter’s rights of appeal. For particular sanctions under this Bill, there are further specific requirements for the Penalty Guidance – see subsections (3) to (6). Penalty Guidance is focussed on specific civil sanctioning powers.

Clause 37: Guidance as to enforcement of relevant offences

102. This clause requires that where a Minister grants a regulator any alternative sanctioning power under this Bill that the regulator should prepare and publish guidance about how the offence to which the power relates is enforced (“Enforcement Policy”). For each offence, the Enforcement Policy must set out the relevant sanctions to which a defaulter may be liable. The Enforcement Policy must also set out the action which the regulator may take to enforce the offence. For example, it might state that a particular offence will usually be enforced by way of a fixed monetary penalty rather than criminal prosecution. The Enforcement Policy must set out the circumstances in

which the regulator is likely to take such action. For example, the policy might say that criminal prosecution may be more likely where the defaulter has a past history of regulatory non-compliance. The Enforcement Policy, in contrast to Penalty Guidance, is focussed on how particular offences are enforced.

103. Regulators will be able to revise their guidance periodically. The regulator will be required to consult with all persons it considers appropriate before publishing or revising its guidance.

Clause 38: Scotland

104. This clause prohibits (save for consequential purposes) an order made under this Bill from making any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament. This would prevent the order to be used to grant regulators the alternative sanctioning powers under this Bill for offences that relate to matters that have been devolved to the Scottish regulators, for example, environmental health. There is no prohibition on using the powers in the Bill for matters that have been reserved to the UK Parliament, for example, consumer protection.
105. If a Minister of the Crown proposes to make an order that affects the prosecution of any offence in Scotland, that Minister is required to obtain the agreement of the Lord Advocate.
106. If a Minister of the Crown proposes to make an order that affects the powers of a regulator that is a local authority in Scotland then that Minister will be required to consult with Scottish Ministers because they will have an interest in the functions of local authorities in Scotland.

Clause 39: Northern Ireland

107. This clause prohibits (save for consequential purposes) an order made under this Bill from making any provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly. This would prevent the order to be used to grant regulators the alternative sanctioning powers under this Bill for offences that relate to matters that have been transferred to the Northern Ireland Assembly. There is no prohibition on using the powers in the Bill for matters that have been reserved to the UK Parliament, for example, consumer safety in relation to goods.

Clause 40: Wales

108. The powers contained within this Bill (clauses 22 to 34) given to a Minister of the Crown can also be used by Welsh Ministers in relation to matters that affect Wales, and which are the responsibility of Welsh Ministers. Welsh Ministers are required to consult with the Secretary of State before using these powers.
109. A Minister of the Crown must consult with Welsh Ministers before making an order under this Bill that will affect the sanctioning of an offence that applies in or in relation to Wales.
110. A Minister of the Crown, after consulting with Welsh Ministers on the provisions of an order under this Bill, must also seek the agreement of Welsh Ministers if the order affects the sanctioning of an offence which applies in or in relation to Wales and relates to functions that are exercised by Welsh Ministers.
111. If any order made under this Bill makes provision which would be within the legislative competence of the National Assembly for Wales, that order can only be made with the consent of the Assembly.

Clause 41: Monetary Penalties

112. Clause 41 (1)(a) allows the order to make provision for discounts for early payment of a penalty when a regulator requires a defaulter to pay a monetary penalty.
113. Subsection (1)(b) allow for the levying of financial penalties for the late payment of the penalty. This might be in the form of a interest or a daily penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed.
114. Subsection (1)(c) permits an order to enable the regulator to treat any monetary penalty issued, and any additional late payment charges that are relevant, as a civil debt that is recoverable through the courts.
115. Any monetary penalty including any additional late payment charges received by the regulator under powers granted pursuant to an order under this Bill shall be paid to the Consolidated Fund.

Clause 42: Appeals

116. Subsection (1)(a) of this clause allows the Minister to make provision for the

suspension of the effect of a fixed penalty or other requirement during an appeal. This might include provision such as:

- During appeal, a defaulter may apply for the effect of the permanent cessation notice to be suspended pending the result of the appeal. If this application is unsuccessful then the notice will remain in force during the appeal; or
- Should the defaulter appeal, the effect of the permanent cessation notice may be automatically suspended until the result of the appeal is known.

117. Subsection (1)(b) enables the Minister to make provision about the powers of an appellate body. Examples of the possible powers an appellate body might have are set out in subsection (2) of this clause. The appellate body may have power to withdraw or confirm a sanction, power to take such other steps which a regulator could take (e.g. impose another sanction upon the defaulter), and a power to remit the sanctioning decision back to the regulator for further consideration.

Clause 43: Supplementary powers

118. Subsection (3) gives examples of how the power under subsection (2) might be used. The power might be used to grant a regulator powers to require information or extend a regulator's existing information gathering powers in order to allow a regulator to investigate a matter that might lead to the use of the alternative sanctioning powers under this Bill. The power may also be used in a similar way in relation to a regulator's powers of entry or search. Where the legislation setting out the relevant offence contains a prohibition of collateral use of information gathered during the investigation for other matters, the power under subsection (2) might be used to allow that information to be used to prove that an act or omission constituting a relevant offence meriting the use of sanctions in the Bill has occurred. The power can be used in these ways only for the purpose of facilitating the use of the alternative sanctioning powers contained in this Bill. It would be for the Minister to determine whether the use of the power in subsection (2) would, in any given case, be compatible with ECHR rights.

Clause 44: Consultation

119. This clause requires a person proposing to make an order under Part 2 to consult with the regulator that will be the recipient of the powers to be granted by the order and such other persons he considers appropriate. That person will also be required to consult with relevant organisations that the person considers represents the interests of persons substantially affected by the proposals.

120. If as a result of this consultation exercise responses change any part of the proposals

the person shall be required to undertake further consultation on the revised proposals as he considers appropriate.

121. If a regulator has consulted before the Bill becomes an Act and this consultation has satisfied the criteria set out in subsections (1) and (2) this consultation will be valid.

Clause 45: Other procedural requirements

122. Clause 45 requires that any order made by a Minister under this Bill must be made by statutory instrument. Any statutory instrument made must be subject to an affirmative resolution procedure. This means that any statutory instrument made under this Bill cannot become law unless it is approved by both Houses of Parliament.
123. Statutory instruments made under this Bill by Welsh Ministers cannot become law unless it is approved by resolution of the National Assembly for Wales.

PART 3: GENERAL

Clause 48: Commencement

124. Clause 48 specifies how and when the powers contained within the Bill will commence. Part 1 of the Bill comes into force on the day specified by statutory instrument to be made by the Minister for the Cabinet Office. Part 2 comes into force two months after Royal Assent of the Bill.

Schedule 2: Replacement of the LBRO company by LBRO

125. Schedule 2 provides for the transfer of staff, property, rights and liabilities of the LBRO company to the statutory LBRO. This ensures continuity between the new and old LBRO, for example, in relation to legal proceedings. In particular, paragraph 1 of Schedule 2 provides that the transfer should be treated as if it were a transfer of an undertaking to which Transfer of Undertakings (Protection and Employment) Regulations 2006 applies and paragraphs 3 to 5 effect continuity, such that things done by the LBRO company immediately before it is dissolved has effect as if done by LBRO.

EFFECTS OF THE BILL ON PUBLIC EXPENDITURE

126. The Regulatory Enforcement and Sanctions Bill will impact on public expenditure in

a number of ways, all of which are addressed in the accompanying impact assessment.

127. The biggest impact will be upon local authorities administering Primary Authority schemes. Overall, we expect the associated costs to be £2.5 million. However, this will be offset by the time savings that follow for local authorities overall, which we expect to amount to between £3.3 and £5.5 million. Local authorities will also benefit from LBRO's role in advising central government on regulatory priorities and the way in which local authorities carry out their regulatory functions. Overall, it is anticipated that the Bill will result in a net benefit to local authorities of between £1.5 million to £3.7 million.
128. The regulatory sanctions proposals will impact on regulators and the court system. There may be new costs to the courts and tribunals associated with appeals of £1.5 million: however, it is expected that the reduction in cases going through the courts will result in a saving for them of £3 million. There will be new costs for regulators as they start to take advantage of new approaches to sanctions, though this will be offset by savings of £1.5 million from the use of less costly approaches to enforcement.

EFFECT ON PUBLIC SECTOR MANPOWER

129. The Regulatory Enforcement and Sanctions Bill will necessitate only minor changes in public service manpower, if any.

COST TO BUSINESS AND REGULATORY IMPACT

130. An impact assessment related to the provisions for both parts of the Bill - regulatory enforcement by local authorities and regulatory sanctions has been completed and is attached to the draft Bill. The impact assessment concludes that the Bill will have significant net benefits for business. The main cost to business will arise from the impact of new regulatory sanctions but these will not affect businesses that are compliant with the law. This cost is more than offset by the benefits to business: a new framework for Primary Authority partnerships, the Local Better Regulation Office's objective to secure that local authorities exercise their relevant functions in a way that does not give rise to unnecessary burdens, and reduced court costs associated with the regulatory sanctions proposals.



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