



Regulatory Enforcement and Sanctions Act 2008

2008 CHAPTER 13

PART 4

REGULATORY BURDENS

72 Duty not to impose or maintain unnecessary burdens

- (1) Any person exercising a regulatory function to which this section applies must keep that function under review and secure that in exercising the function the person does not—
 - (a) impose burdens which that person considers to be unnecessary, or
 - (b) maintain burdens which that person considers to have become unnecessary.
- (2) Subsection (1) does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impracticable or disproportionate.
- (3) Where this section applies to a regulatory function, the person exercising the function must from time to time publish a statement setting out—
 - (a) what the person proposes to do pursuant to subsection (1) in relation to the function in the period to which the statement relates,
 - (b) (except in the case of the first statement published by the person under this section) what the person has done pursuant to subsection (1) in relation to the function since the previous statement published by that person under this section, and
 - (c) where a burden relating to the exercise of the function which has become unnecessary is maintained pursuant to subsection (2), the reasons why removal of the burden would, having regard to all the circumstances, be impracticable or disproportionate.
- (4) The first statement published under this section by a person—

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- (a) must be published as soon as reasonably practicable after the commencement of the duty in subsection (1) in relation to the function, and
 - (b) is to be a statement for the period of twelve months beginning with the day of its publication.
- (5) A subsequent statement published by a person under this section—
- (a) must be published during the period to which the previous statement related or as soon as reasonably practicable thereafter, and
 - (b) must be a statement for the period of twelve months beginning with the end of the period to which the previous statement related.
- (6) The publication of a statement under this section must be in such manner as the person publishing it considers appropriate for bringing it to the attention of the persons likely to be affected by it.
- (7) A person exercising a function to which subsection (1) applies must, in exercising the function during a period for which a statement is in force under this section, have regard to that statement.

73 Functions to which section 72 applies

- (1) Section 72 applies to the following regulatory functions—
- (a) the regulatory functions specified in subsection (2),
 - ^[F1](aa) the regulatory functions specified in subsection (2A),]
 - (b) any regulatory function specified by a Minister of the Crown by order in accordance with this section, and
 - (c) any regulatory function specified by the Welsh Ministers by order in accordance with this section.
- (2) The regulatory functions referred to in subsection (1)(a) are the regulatory functions exercised by—
- (a) the Gas and Electricity Markets Authority,
 - (b) the ^[F2]Competition and Markets Authority] ,
 - (c) ^[F3]the Office of Rail and Road]
 - ^[F4](d) the Office of Communications in relation to postal services, and]
 - (e) the Water Services Regulation Authority,
- other than any function exercised under competition law ^[F5]or any function exercisable by a CMA group (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013) or a member of the CMA panel (within the meaning of that Schedule)] .
- ^[F6](2A) The regulatory functions referred to in subsection (1)(aa) are the regulatory functions exercised by the Civil Aviation Authority under—
- (a) Chapter 1 of Part 1 of the Transport Act 2000 (air traffic services);
 - (b) Chapter 1 of Part 1 of the Civil Aviation Act 2012 (regulation of operators of dominant airports).]
- (3) Any reference in ^[F7]subsection (2) or (2A)] to a regulatory function—
- (a) where the function is exercisable in Scotland, does not include the function if or to the extent that it relates to matters which are not reserved matters,

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- (b) where the function is exercisable in Northern Ireland, does not include the function if or to the extent that it relates to matters which are transferred matters, and
 - (c) where the function is exercisable [^{F8}in relation to Wales] , does not include the function if or to the extent that it relates to a [^{F9}devolved Welsh] matter.
- (4) A Minister of the Crown may not under this section specify—
- (a) a regulatory function so far as exercisable in Scotland, if or to the extent that the function relates to matters which are not reserved matters,
 - (b) a regulatory function so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters which are transferred matters, or
 - (c) a regulatory function so far as exercisable [^{F10}in relation to Wales] , if or to the extent that the function relates to a [^{F11}devolved Welsh] matter.
- (5) The Welsh Ministers may only specify under this section a regulatory function if or to the extent that it relates to a [^{F12}devolved Welsh] matter.
- (6) Before making an order under this section the authority making the order must consult—
- (a) any person whose regulatory functions are to be specified in the order, and
 - (b) such other persons as the authority considers appropriate.
- (7) An order under this section may make such consequential, supplementary, incidental or transitional provision (including provision amending any enactment) as the authority making it considers appropriate.
- (8) An order under this section is to be made by statutory instrument.
- (9) A statutory instrument containing an order under this section 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.
- (10) A statutory instrument containing an order under this section 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.
- [^{F13}(10A) In subsection (2)(d) “postal services” has the same meaning as in Part 3 of the Postal Services Act 2011.]
- (11) In subsections (3) and (4)—
- “reserved matter” and “Scotland” have the same meanings as in the Scotland Act 1998 (c. 46);
 - “transferred matter” and “Northern Ireland” have the same meanings as in the Northern Ireland Act 1998 (c. 47);
 - “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32).

Textual Amendments

- F1** S. 73(1)(aa) inserted (6.4.2013) by [Civil Aviation Act 2012 \(c. 19\)](#), **ss. 104(2)**, 110(1) (with [Sch. 10 paras. 12, 17](#)); [S.I. 2013/589](#), art. 2(4)(c)
- F2** Words in s. 73(2)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 180(a)** (with art. 3)

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- F3** Words in s. 73(2)(c) substituted (E.W.S.) (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), **Sch. para. 4(s)(i)**
- F4** S. 73(2)(d) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 191(2)**; S.I. 2011/2329, art. 3
- F5** Words in s. 73(2) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 180(b)** (with art. 3)
- F6** S. 73(2A) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 104(3)**, 110(1) (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(4)(c)
- F7** Words in s. 73(3) substituted (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 104(4)**, 110(1) (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(4)(c)
- F8** Words in s. 73(3)(c) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), **ss. 21(3)**, 44(5); S.I. 2016/695, art. 3(c)
- F9** Words in s. 73(3)(c) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), **ss. 21(2)(h)**, 44(5); S.I. 2016/695, art. 3(c)
- F10** Words in s. 73(4)(c) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), **ss. 21(3)**, 44(5); S.I. 2016/695, art. 3(c)
- F11** Words in s. 73(4)(c) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), **ss. 21(2)(h)**, 44(5); S.I. 2016/695, art. 3(c)
- F12** Words in s. 73(5) substituted (1.10.2016) by Enterprise Act 2016 (c. 12), **ss. 21(2)(h)**, 44(5); S.I. 2016/695, art. 3(c)
- F13** S. 73(10A) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 191(3)**; S.I. 2011/2329, art. 3

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 70(6) inserted by [2018 c. 12 Sch. 19 para. 152\(3\)](#)