



# Regulatory Enforcement and Sanctions Act 2008

## 2008 CHAPTER 13

### PART 4

#### REGULATORY BURDENS

#### 73 Functions to which section 72 applies

- (1) Section 72 applies to the following regulatory functions—
- (a) the regulatory functions specified in subsection (2),
  - <sup>[F1]</sup>(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 <sup>[F2]</sup>Competition and Markets Authority ,
  - (c) <sup>[F3]</sup>the Office of Rail and Road
  - <sup>[F4]</sup>(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 <sup>[F5]</sup>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) .
- <sup>[F6]</sup>(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);

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- (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,
  - (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).

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### 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)
- 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

**Changes to legislation:**

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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\(3\)](#)