

Regulatory Reform Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Cabinet Office, will be published separately as Bill 51 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Marjorie Mowlam has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Regulatory Reform Bill [HL] are compatible with the Convention rights.

Regulatory Reform Bill [HL]

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Enable provision to be made for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity and to enable codes of practice to be made with respect to the enforcement of restrictions, requirements or conditions.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Power to make provision reforming law which imposes burdens

1 Power by order to make provision reforming law which imposes burdens

- (1) Subject to subsections (3) to (5) and to sections 3 to 8, a Minister of the Crown may by order make provision for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity, with a view to one or more of the following objects— 5
- (a) the removal or reduction of any of those burdens,
 - (b) the re-enacting of provision having the effect of imposing any of those burdens, in cases where the burden is proportionate to the benefit which is expected to result from the re-enactment, 10
 - (c) the making of new provision having the effect of imposing a burden which—
 - (i) affects any person in the carrying on of the activity, but
 - (ii) is proportionate to the benefit which is expected to result from its creation, and 15
 - (d) the removal of inconsistencies and anomalies.
- (2) In subsection (1) “legislation” means the law contained in any provision of—
- (a) any Act (whether or not in force) which was passed at least two years before the day on which the order is made, or
 - (b) an order under this section or under section 1 of the Deregulation and Contracting Out Act 1994 (c. 40) (in this Act referred to as “the 1994 Act”), 20

but does not include the law contained in any such provision in its application to Scotland where that provision would, if contained in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

- (3) An order under this section must include provision made by virtue of subsection (1)(a). 5
- (4) No order under this section may be made for the purpose of reforming the law contained in any provision of an Act if that provision has been amended, otherwise than merely for consequential or incidental purposes—
- (a) by an Act passed not more than two years before the day on which the order is made, or 10
- (b) by any subordinate legislation made not more than two years before that day,
- but this subsection does not prevent an order under this section from re-enacting without substantive amendment any provision which has been so amended. 15
- (5) An order under this section which removes or modifies any function of the National Assembly for Wales may be made only with the agreement of the Assembly.
- (6) The provision that may be made by order under this section includes—
- (a) provision amending or repealing any enactment, 20
- (b) provision creating or imposing, or authorising or requiring the creation or imposition of, anything which would be a burden but for the fact that it affects only a Minister of the Crown or government department, and
- (c) such incidental, consequential, transitional or supplemental provision as the Minister thinks appropriate. 25
- (7) An order under this section may make different provision for different areas.

2 Meaning of “burden” and related expressions

- (1) In this Act “burden” includes—
- (a) a restriction, requirement or condition (including one requiring the payment of fees or preventing the incurring of expenditure) or any sanction (whether criminal or otherwise) for failure to observe a restriction or to comply with a requirement or condition, and 30
- (b) any limit on the statutory powers of any person (including a limit preventing the charging of fees or the incurring of expenditure),
- but does not include any burden which affects only a Minister of the Crown or government department. 35
- (2) In this Act—
- (a) any reference to creating or imposing a burden includes a reference to authorising or requiring a burden to be created or imposed,
- (b) any reference to removing a burden includes a reference to removing the authorisation or requirement by virtue of which a burden may be imposed, and 40
- (c) any reference to reducing a burden includes a reference to reducing the authorisation or requirement by virtue of which a burden may be imposed (for example, by restricting the circumstances in which it is authorised or required to be imposed). 45

3 Limitations on order-making power

- (1) An order under section 1 may be made only if the Minister making the order is of the opinion that the order does not –
- (a) remove any necessary protection, or
 - (b) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise. 5
- (2) An order under section 1 may create a burden affecting any person in the carrying on of an activity only if the Minister is of the opinion –
- (a) that the provisions of the order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burden being created, and 10
 - (b) that the extent to which the order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for the order to be made. 15
- (3) If an order under section 1 creates a new criminal offence, then, subject to subsection (4), that offence shall not be punishable –
- (a) on indictment with imprisonment for a term exceeding two years, or
 - (b) on summary conviction with imprisonment for a term exceeding six months or a fine exceeding level 5 on the standard scale. 20
- (4) In the case of an offence which, if committed by an adult, is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of –
- (a) Part V of the Criminal Justice Act 1988 (c. 33), or
 - (b) section 292(6) and (7) of the Criminal Procedure (Scotland) Act 1995 (c. 46), 25
- the reference in subsection (3)(b) to level 5 on the standard scale is to be construed as a reference to the statutory maximum.
- (5) An order under section 1 shall not contain any provision –
- (a) providing for any forcible entry, search or seizure, or 30
 - (b) compelling the giving of evidence,
- unless a provision to that effect is contained in an enactment repealed by the order and the powers conferred by the provision to that effect contained in the order are exercisable for the same purposes as the powers conferred by the repealed enactment or for purposes of a like nature. 35

4 Statutory instrument procedure

- (1) An order under section 1 shall be made by statutory instrument.
- (2) Subject to subsection (7), no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (3) An order under section 1 may designate specified provisions of the order as subordinate provisions for the purposes of this section; and in the following provisions of this section references to the subordinate provisions of an order are references to the provisions so designated. 40
- (4) In the following provisions of this section “a subordinate provisions order” means an order under section 1 which contains a statement that it makes only provision which either – 45

- (a) modifies the subordinate provisions of an order previously made under that section, or
- (b) is incidental, consequential, transitional or supplemental provision relating to the provision falling within paragraph (a).
- (5) Sections 1(3) and 3(2)(b) do not apply to a subordinate provisions order. 5
- (6) An order under section 1 which designates subordinate provisions may provide that the power to make a subordinate provisions order relating to those provisions is to be exercisable in relation to Wales—
- (a) by the National Assembly for Wales,
- (b) by the Assembly concurrently with a Minister of the Crown, or 10
- (c) by a Minister of the Crown with the agreement of, or after consultation with, the Assembly;
- and, in relation to the making of a subordinate provisions order, references in sections 1 to 3 to a Minister of the Crown shall so far as necessary be construed as being or including a reference to the Assembly. 15
- (7) Subsection (2) does not apply to a subordinate provisions order, if—
- (a) it is not made by a Minister of the Crown,
- (b) the order designating the subordinate provisions concerned (“the main order”) provides that the subordinate provisions order shall be subject to annulment in pursuance of a resolution of either House of Parliament, or 20
- (c) the main order provides that the subordinate provisions order—
- (i) is to be laid before Parliament after being made; and
- (ii) is to cease to have effect at the end of the relevant period unless before the end of that period it is approved by a resolution of each House of Parliament (but without that affecting anything done under it or the power to make a new order). 25
- (8) In subsection (7)(c) “relevant period” means a period of twenty-eight days beginning with the day on which the subordinate provisions order is made.
- (9) In reckoning the period of twenty-eight days referred to in subsection (8), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. 30
- (10) For the purposes of section 5(1) of the Statutory Instruments Act 1946 (c. 36), provision falling within subsection (7)(b) is to be treated as provision made by an Act. 35
- (11) Nothing in sections 5 to 8 applies in relation to a subordinate provisions order.

5 Preliminary consultation

- (1) Before a Minister makes an order under section 1, he shall—
- (a) consult such organisations as appear to him to be representative of interests substantially affected by his proposals, 40
- (b) where his proposals relate to the functions of one or more statutory bodies, consult those bodies or organisations which appear to him to be representative of those bodies,
- (c) in such cases as he considers appropriate, consult the Law Commission or the Scottish Law Commission, 45

- (d) where the provision made by the order would extend to Wales, consult the National Assembly for Wales, and
 - (e) consult such other persons as he considers appropriate.
- (2) In subsection (1) “statutory body” means –
- (a) a body established by an enactment or by any instrument made under an enactment, or
 - (b) the holder of any office so established.
- (3) If it appears to the Minister, as a result of the consultation required by subsection (1), that it is appropriate to vary the whole or any part of his proposals, he shall undertake such further consultation with respect to the variations as appears to him to be appropriate.
- (4) If, before the day on which this Act is passed, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of subsection (1), those requirements shall to that extent be taken to have been satisfied.

6 Document to be laid before Parliament

- (1) If, after the conclusion of –
- (a) the consultation required by section 5(1), and
 - (b) any further consultation undertaken as mentioned in subsection 5(3),
- the Minister considers it appropriate to proceed with the making of an order under section 1, he shall lay before Parliament a document containing his proposals in the form of a draft of the order, together with details of the matters specified in subsection (2).
- (2) The matters referred to in subsection (1) are –
- (a) the burdens which the existing law affected by the proposals has the effect of imposing,
 - (b) how the proposals further the object mentioned in section 1(1)(a),
 - (c) whether and, if so, how the proposals also further the objects mentioned in section 1(1)(b), (c) and (d),
 - (d) whether the existing law affected by the proposals affords any necessary protection and, if so, how that protection is to be continued,
 - (e) whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom,
 - (f) whether the proposals would have the effect of creating a burden affecting any person in the carrying on of an activity and, if so, how the conditions in section 1(1)(c) and 3(2) are satisfied,
 - (g) whether any provisions of the proposed order are being designated as subordinate provisions for the purposes of section 4 and, if so, why they are being so designated,
 - (h) whether any savings or increases in cost are estimated to result from the proposals and, if so, –
 - (i) the reasons why savings or increases in cost should be expected, and
 - (ii) if it is practicable to make an estimate of the amount, that amount and how it is calculated,

- (i) any benefits (other than savings in cost) which are expected to flow from the implementation of the proposals,
- (j) any consultation undertaken as required by section 5(1) or (3),
- (k) any representations received as a result of that consultation, and
- (l) the changes (if any) which the Minister has made to his original proposals in the light of those representations. 5

7 Representations made in confidence or containing damaging information

- (1) Subsection (2) applies where a person (“the respondent”), in making any representations as a result of any consultation undertaken as required by section 5(1) or (3), requests that the Minister should not disclose the representations made by the respondent. 10
- (2) Where this subsection applies, the Minister, in giving details of the representations referred to in section 6(2)(k), shall disclose the fact that the respondent has made representations, but shall not disclose the respondent’s representations except— 15
 - (a) with the consent of the respondent and, where the information contained in the representations relates to any other person or business, of the person to whom the information relates or of the person for the time being carrying on the business, or
 - (b) in such a manner as not to identify them with that respondent or with that other person or business. 20
- (3) Where a person, in making any representations as a result of any consultation undertaken as required by section 5(1) or (3), discloses information which relates to a third person, the Minister is not obliged to disclose that information in giving details of the representations referred to in section 6(2)(k) if, or to the extent that— 25
 - (a) it appears to the Minister that the disclosure of that information could adversely affect the interests of the third person, and
 - (b) the Minister has been unable either to verify the information or to obtain the consent of the third party to the disclosure. 30
- (4) Subsections (2) and (3) do not affect any disclosure which—
 - (a) is requested during the period for Parliamentary consideration, as defined by section 8(2), by any committee of either House of Parliament charged with reporting on the proposals in question, and
 - (b) is made to that committee. 35

8 Parliamentary consideration of proposals

- (1) Where a document has been laid before Parliament under section 6(1), no draft of an order under section 1 to give effect (with or without variations) to proposals in that document shall be laid before Parliament until after the expiry of the period for Parliamentary consideration, as defined by subsection (2). 40
- (2) In this section “the period for Parliamentary consideration”, in relation to a document, means the period of sixty days beginning on the day on which it was laid before Parliament.

- (3) In reckoning the period of sixty days referred to in subsection (2), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
- (4) In preparing a draft of an order under section 1 to give effect, with or without variations, to proposals in a document laid before Parliament under section 6(1), the Minister concerned shall have regard to any representations made during the period for Parliamentary consideration and, in particular, to any resolution or report of, or of any committee of, either House of Parliament with regard to the document. 5
- (5) Together with a draft of an order laid before Parliament under section 4(2), the Minister concerned shall lay a statement giving details of— 10
- (a) any representations, resolution or report falling within subsection (4); and
- (b) the changes (if any) which, in the light of any such representations, resolution or report, the Minister has made to his proposals as contained in the document previously laid before Parliament under section 6(1). 15
- (6) Section 7 shall apply in relation to the representations referred to in subsection (5)(a) as it applies in relation to the representations referred to in section 6(2)(k), but with the omission of subsection (4). 20

Enforcement practice

9 Codes of practice relating to enforcement of regulatory requirements

- (1) If it appears to the appropriate authority—
- (a) that the effect of the provision made by any enactment is such as to impose, or to authorise or require the imposition of, a restriction, requirement or condition affecting any person, and 25
- (b) that the practice followed by enforcement officers in relation to the enforcement of the restriction, requirement or condition ought to be improved so far as fairness, transparency and consistency are concerned, 30
- the appropriate authority may issue a code of practice setting out recommended practice in relation to the enforcement of the restriction, requirement or condition.
- (2) A code of practice under this section may, in particular, relate to—
- (a) the practice to be adopted by all enforcement officers in enforcing all restrictions, requirements or conditions imposed by specified enactments, or 35
- (b) the practice to be adopted by enforcement officers of a specified description, or by enforcement officers in specified areas.
- (3) Where— 40
- (a) a court or tribunal finds that a person has failed to comply with a restriction, requirement or condition,
- (b) a code of practice under this section applies in relation to the enforcement of that restriction, requirement or condition, and
- (c) it appears to the court or tribunal that there has been a failure to comply with the code, 45

- the court or tribunal may take the failure to comply with the code into account in deciding how to deal with the failure to comply with the restriction, requirement or condition.
- (4) A code of practice under this section may not include any provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament. 5
- (5) In this section and section 10 –
- “the appropriate authority” means –
- (a) in the case of a code of practice which relates to enforcement action which is a function of the National Assembly for Wales, the Assembly or a Minister of the Crown acting with the agreement of the Assembly, or 10
- (b) in any other case, a Minister of the Crown;
- “enactment” includes an enactment comprised in subordinate legislation but not an enactment comprised in Northern Ireland legislation, as defined by section 24(5) of the Interpretation Act 1978 (c. 30); 15
- “enforcement action” –
- (a) in relation to any restriction, requirement or condition, means any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it, and 20
- (b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence; 25
- “enforcement officer” does not include –
- (a) the Director of Public Prosecutions,
- (b) the Lord Advocate or a procurator fiscal, or
- (c) the Director of Public Prosecutions for Northern Ireland, 30
- but, subject to that, means any person who is authorised, whether by or under an enactment or otherwise, to take enforcement action;
- “licence” includes any authorisation (by whatever name called) to do anything which would otherwise be unlawful.
- 10 Making of codes of practice by Ministers of the Crown 35**
- (1) Where a Minister of the Crown proposes to issue or revise a code of practice under section 9, he shall prepare a draft of the code (or revised code).
- (2) The Minister shall consult about the draft –
- (a) persons appearing to him to be representative of enforcement officers who are authorised to enforce any of the restrictions, requirements or conditions to which the code of practice relates, 40
- (b) if the draft relates to Wales, the National Assembly for Wales, and
- (c) such other persons as he considers appropriate.
- (3) If the Minister determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay a copy of the draft before each House of Parliament. 45

- (4) If, within the 40-day period, either House resolves not to approve the draft, the Minister shall take no further steps in relation to the proposed code.
- (5) If no such resolution is made within the 40-day period, the Minister shall issue the code (or revised code) in the form of the draft, and it shall come into force on such date as the Minister may by order made by statutory instrument appoint. 5
- (6) Subsection (4) does not prevent a new draft of a proposed code from being laid before Parliament.
- (7) In this section “40-day period”, in relation to the draft of a proposed code, means— 10
- (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and
- (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House, 15
- no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) In this section references to a proposed code include references to a proposed revised code. 20

11 Making of codes of practice by National Assembly for Wales

- (1) Where the National Assembly for Wales proposes to issue or revise a code of practice under section 9, the Assembly shall prepare a draft of the code (or revised code).
- (2) The Assembly shall consult about the draft— 25
- (a) persons appearing to the Assembly to be representative of enforcement officers who are authorised to enforce any of the restrictions, requirements or conditions to which the code of practice relates, and
- (b) such other persons as the Assembly considers appropriate.
- (3) Any code issued by the Assembly shall come into force on such day as the Assembly may by order made by statutory instrument appoint. 30

Supplementary

12 Repeals and savings

- (1) Sections 1 to 5 of, and Schedule 1 to, the 1994 Act (which are superseded by the provisions of this Act)— 35
- (a) are hereby repealed as respects England and Wales and Northern Ireland, and
- (b) shall cease to have effect as respects Scotland except in so far as they relate to the making of orders by the Scottish Ministers.
- (2) Where a document has been laid before Parliament under section 3(3) of the 1994 Act before the day on which this Act is passed, but no draft of an implementing order has been laid before Parliament before that day, 40

subsection (1) does not affect the application of sections 1 to 4 of that Act in relation to the making of an implementing order.

- (3) In subsection (2) “an implementing order”, in relation to any document laid before Parliament under section 3(3) of the 1994 Act, means an order to give effect (with or without variations) to proposals in that document. 5
- (4) Subsection (1) does not affect the continuation in force of any order under section 1 of the 1994 Act which –
- (a) was made before the day on which this Act is passed, or
 - (b) is made on or after that day by virtue of subsection (2).

13 Consequential amendments 10

- (1) In section 6 of the 1994 Act (model provisions with respect to appeals), in subsection (7) –
- (a) in the definition of “enforcement action”, for “section 5 above” there is substituted “section 9 of the Regulatory Reform Act 2001”, and
 - (b) for the definition of “interested person” there is substituted – 15
 - ““interested person” means –
 - (a) the person against whom enforcement action may be or has been taken;
 - (b) any other person who will or may be required to meet, or to make a significant contribution towards, the cost of observing the restriction or complying with the requirement or condition; or 20
 - (c) where the enforcement action which may be or has been taken relates specifically to goods or services which are to be or have been supplied by a person other than the one against whom enforcement action may be or has been taken, that person;”.
- (2) This section does not extend to Scotland. 25

14 Interpretation

In this Act – 30

- “the 1994 Act” means the Deregulation and Contracting Out Act 1994 (c. 40);
- “burden” and related expressions have the meaning given by section 2;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26); 35
- “subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30);
- “Wales” has the same meaning as in the Government of Wales Act 1998 (c. 38).

15 Short title and extent 40

- (1) This Act may be cited as the Regulatory Reform Act 2001.
- (2) This Act extends to Northern Ireland.

- (3) An order under section 1 which amends or repeals any enactment extending outside the United Kingdom may have the same extent as the enactment amended or repealed.
- (4) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.**