BERR | Department for Business Enterprise & Regulatory Reform

REGULATORS' COMPLIANCE CODE

Statutory Code of Practice for Regulators

17 DECEMBER 2007

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BETTER REGULATION EXECUTIVE

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Foreword

The Regulators' Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

Our expectation is that as regulators integrate the Code's standards into their regulatory culture and processes, they will become more efficient and effective in their work. They will be able to use their resources in a way that gets the most value out of the effort that they make, whilst delivering significant benefits to low risk and compliant businesses through better-focused inspection activity, increased use of advice for businesses, and lower compliance costs.

The Compliance Code has been issued with parliamentary approval, following a wide and lengthy consultation process, and comes into force on 6 April 2008 by virtue of the Legislative and Regulatory Reform Code of Practice (Appointed Day) Order 2007.

I believe that the application of the Code can make a difference on the ground to the regulators, those they regulate, and society in general.

Pat McFadden MP
Minister of State
Department for Business, Enterprise
and Regulatory Reform
(BERR)

Part 1

General introduction

1. Purpose of the Code

1.1 Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.

1.2 This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report[1]. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes[2] without imposing unnecessary burdens on business, the Third Sector[3] and other regulated entities[4].

1.3 The Code stresses the need for regulators[5] to adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

1.4 The Code supports regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging effect on legitimate businesses and desirable regulatory outcomes. The Code does not relieve regulated entities of their responsibility to comply with their obligations under the law.

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[1] *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005.

[2] Throughout this Code, the term 'regulatory outcomes' means the 'end purpose' of regulatory activity (for example, reduction in accidents/disease, less pollution).

[3] This is defined as non-governmental organisations that include voluntary and community organisations, charities, social enterprises, cooperatives and mutuals.

[4] Throughout this Code, the term 'regulated entities' includes businesses, public sector bodies, charities and voluntary sector organisations that are subject to regulation.

[5] The term 'regulator' is used in this code to refer to any organisation that exercises a regulatory function.

2. Background and scope

2.1 This Code has been laid before Parliament by the Minister for the Cabinet Office and has been approved by both Houses of Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"), after having consulted persons appearing to him to be representative of persons exercising regulatory functions and such other persons as he considered appropriate. In preparing the draft, the Minister has sought to secure that the Code is consistent with the Principles of Good Regulation specified in section 21(2) of the Act.[6]

2.2 The Minister issues the Code under section 22(1) of the Act on 17 December 2007.

2.3 The Code only applies to those regulatory functions specified by order made under section 24(2) of the Act. Any regulator whose functions are so specified **must have regard to** this Code:

(a) when determining any general policy or principles about the exercise of those specified functions (section 22(2)); or

(b) when exercising a specified regulatory function which is itself a function of setting standards or giving general guidance about other regulatory functions (whether their own functions or someone else's functions)(section 22(3)).

2.4 The duties to have regard to the Code under section 22(2) and (3) of the Act **do not** apply to the exercise by a regulator or its staff of any specified regulatory function in individual cases. This means, for example, that while an inspector or investigator should operate in accordance with a regulator's general policy or guidance on inspections, investigations and enforcement activities, the Code does not apply directly to the work of that inspector or investigator in carrying out any of these activities in individual cases.

2.5 The duty on a regulator to "have regard to" the Code means that the regulator **must** take into account the Code's provisions and give them due weight in developing their policies or principles or in setting standards or giving guidance.

2.6 The regulator is not bound to follow a provision of the Code if they *properly* conclude that the provision is either not relevant or is outweighed by another relevant consideration. They should ensure that any decision to depart from any provision of the Code is properly reasoned and based on material evidence. Where there are no such relevant considerations, regulators should follow the Code.

2.7 Section 22(4) of the Act provides that the duty to have regard to the Code is subject to any other legal requirement affecting the exercise of the regulatory function, including EC law obligations.

[6] *These principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed.*

2.8 In accordance with section 24(3) of the Act, this Code does not apply to:

- regulatory functions so far as exercisable in Scotland to the extent that the functions relate to matters which are not reserved matters;
- regulatory functions so far as exercisable in Northern Ireland to the extent that the functions relate to transferred matters; or
- regulatory functions exercisable only in or as regards Wales.

Part 2

Specific obligations of the Code

This part outlines the Hampton Principles on which this Code is based, and sets out the specific provisions that elaborate these principles. The Hampton Principles and the italicised statement at the start of each numbered section do not form part of the Code's requirements, but set the context in which the specific obligations set out in the numbered paragraphs should be interpreted.

3. Economic progress

Hampton Principle: *Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.*

Good regulation and its enforcement act as an enabler to economic activity. However, regulation that imposes unnecessary burdens can stifle enterprise and undermine economic progress. To allow or encourage economic progress, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

3.1 Regulators should consider the impact that their regulatory interventions may have on economic progress, including through consideration of the costs, effectiveness and perceptions of fairness of regulation. They should only adopt a particular approach if the benefits justify the costs[7] and it entails the minimum burden compatible with achieving their objectives.

3.2 Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

[7] Costs and benefits include economic, social and environmental costs and benefits.

3.3 Regulators should consider the impact that their regulatory interventions may have on small regulated entities, using reasonable endeavours to ensure that the burdens of their interventions fall fairly and proportionately on such entities, by giving consideration to the size of the regulated entities and the nature of their activities.

3.4 When regulators set standards or give guidance in relation to the exercise of their own or other regulatory functions (including the functions of local authorities), they should allow for reasonable variations to meet local government priorities, as well as those of the devolved administrations.

4. Risk Assessment

Hampton Principle: *Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.*

Risk assessment involves the identification and measurement of capacity to harm and, if such capacity exists, an evaluation of the likelihood of the occurrence of the harm. By basing their regulatory work on an assessment of the risks to regulatory outcomes, regulators are able to target their resources where they will be most effective and where risk is highest. As such, in order to carry out comprehensive and effective risk assessment, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

4.1 Regulators should ensure that the allocation of their regulatory efforts and resources is targeted where they would be most effective by assessing the risks to their regulatory outcomes. They should also ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including:

- data collection and other information requirements;
- inspection programmes;
- advice and support programmes; and
- enforcement and sanctions.

4.2 Risk assessment should be based on all available relevant and good-quality data[8]. It should include explicit consideration of the combined effect of:

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance.

[8] An example of risk methodology, which the Hampton Review recognised as "best practice" (see *Hampton Report*, at page 32) is the Environmental Protection – Operator & Pollution Risk Appraisal scheme (EP OPRA).

4.3 In evaluating the likelihood of non-compliance, regulators should give consideration to all relevant factors, including:

- past compliance records and potential future risks;
- the existence of good systems for managing risks, in particular within regulated entities or sites
- evidence of recognised external accreditation; and
- management competence and willingness to comply.

4.4 Regulators should consult and involve regulated entities and other interested parties in designing their risk methodologies, and publish details of the methodologies.

4.5 Regulators should regularly review and, where appropriate, improve their risk methodologies. In doing so, they should take into account feedback and other information from regulated entities and other interested parties.

5. Advice and Guidance

Hampton Principle: *Regulators should provide authoritative, accessible advice easily and cheaply.*

Without knowing or understanding relevant legal requirements, regulated entities will find it difficult to comply. Regulators can, however, improve compliance through greater focus on support and advice. Regulators must, therefore, have regard to the following requirements when determining general policies or principles or when setting standards or giving general guidance on advice and information services.

5.1 Regulators should ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements[9], are promptly communicated or otherwise made available to relevant regulated entities.

5.2 Regulators should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations. Such information, advice and guidance should be provided in clear, concise and accessible language, using a range of appropriate formats and media[10].

5.3 Regulators should involve regulated entities in developing both the content and style of regulatory guidance. They should assess the effectiveness of their information and support services by monitoring regulated entities' awareness and understanding of legal requirements, including the extent to which those entities incur additional costs obtaining external advice in order to understand and comply with legal requirements.

[9] This includes when a regulatory requirement has been removed and considered no longer relevant or applicable.

[10] A good example of online advice is the Environment Agency's NetRegs (www.netregs.gov.uk) an internet based plain language guidance system for business.

5.4 Regulators should provide targeted and practical advice that meets the needs of regulated entities. Such advice may be provided in a range of formats, such as through face-to-face interactions, telephone helpline and online guidance. In determining the appropriate formats, regulators should seek to maximise the reach, accessibility and effectiveness of advice while ensuring efficient use of resources. There may remain a need for regulated entities with particularly complex practices to use specialist or professional advisors as appropriate.

5.5 When offering compliance advice, regulators should distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice should be confirmed in writing, if requested.

5.6 Regulators should provide appropriate means to ensure that regulated entities can reasonably seek and access advice from the regulator without directly triggering an enforcement action. In responding to such an approach, the regulator should seek primarily to provide the advice and guidance necessary to help ensure compliance.

5.7 Advice services should generally be provided free of charge, but it may be appropriate for regulators to charge a reasonable fee for services beyond basic advice and guidance necessary to help ensure compliance. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support.

6. Inspections and other visits

Hampton Principle: *No inspection should take place without a reason.*

Inspections can be an effective approach to achieving compliance, but are likely to be most effective when they are justified and targeted on the basis of an assessment of risk. In order to ensure the effectiveness of their inspection programmes, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on inspections.

6.1 Regulators should ensure that inspections and other visits, such as compliance or advice visits, to regulated entities only occur in accordance with a risk assessment methodology (see paragraphs 4.2. and 4.3), except where visits are requested by regulated entities, or where a regulator acts on relevant intelligence.

6.2 Regulators should use only a small element of random inspection in their programme to test their risk methodologies or the effectiveness of their interventions.

6.3 Regulators should focus their **greatest** inspection effort on regulated entities where risk assessment shows that both:

- a compliance breach or breaches would pose a serious risk to a regulatory outcome; and
- there is high likelihood of non-compliance by regulated entities.

6.4 Where regulators visit or carry out inspections of regulated entities, they should give positive feedback to the regulated entities to encourage and reinforce good practices. Regulators should also share amongst regulated entities, and with other regulators, information about good practice.

6.5 Where two or more inspectors, whether from the same or different regulators, undertake planned inspections of the same regulated entity, regulators should have arrangements for collaboration to minimise burdens on the regulated entity, for example, through joint or coordinated inspections and data sharing.

7. Information requirements

Hampton Principle: *Businesses should not have to give unnecessary information or give the same piece of information twice.*

Effective regulatory work, including risk assessment, requires accurate information. However, there are costs to its collection both to the regulator and to regulated entities. It is important to balance the need for information with the burdens that entails for regulated entities. As such, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on data requirements.

7.1 When determining which data they may require, regulators should undertake an analysis of the costs and benefits of data requests to regulated entities. Regulators should give explicit consideration to reducing costs to regulated entities through:

- varying data requests according to risk, as set out in paragraph 4.3;
- limiting collection to specific regulated entities sectors/sub-sectors;
- reducing the frequency of data collection;
- obtaining data from other sources;
- allowing electronic submission; and
- requesting only data which is justified by risk assessment.

7.2 If two or more regulators require the same information from the same regulated entities, they should share data to avoid duplication of collection where this is practicable, beneficial and cost effective. Regulators should note the content of the Information Commissioner's letter[11] when applying the Data Protection Act 1998[12] in order to avoid unnecessarily restricting the sharing of data.

7.3 Regulators should involve regulated entities in vetting data requirements and form design for clarity and simplification. They should seek to collect data in a way that is compatible with the processes of regulated entities and those of other regulators who collect similar data.

[11] A letter from the Information Commissioner (22/01/07) giving advice on "data protection and the sharing of regulatory data on businesses" is available at: http://bre.berr.gov.uk/regulation/documents/data/pdf/letter.pdf

[12] 1998 c 29.

8. Compliance and enforcement actions

Hampton Principle: *The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.*

By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions. However, regulators should be able to target those who deliberately or persistently breach the law. To ensure that they respond proportionately to regulatory breaches, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of compliance and enforcement functions.

8.1 Regulators should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this. Regulators should also take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.

8.2 When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

8.3 Regulators should ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review[13]. This means that their sanctions and penalties policies should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

[13] The report of the Macrory Review, which the Government has accepted, is available at: http://bre.berr.gov.uk/REGULATION/reviewing_regulation/penalties/index.asp .

8.4 In accordance with the Macrory characteristics, regulators should also:

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to interested parties;
- follow-up enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

8.5 Regulators should ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken at the time the action is taken. These reasons should be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress should also be explained at the same time.

8.6 Regulators should enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulators should also ensure that their own inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

9. Accountability

Hampton Principle: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

By establishing effective accountability and transparency structures regulators will make their activities accessible and open to scrutiny. This should increase the legitimacy of regulatory activities and enable regulators and regulated entities to work together to achieve regulatory compliance. Regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of regulatory functions.

9.1 Regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties.

9.2 Regulators should identify and explain the principal risks against which they are acting. They should, in consultation with regulated entities and other interested parties, set and publish clear standards and targets for their service and performance. These standards should include:

- regulatory outcomes[14] (capturing the principal risks);
- costs to regulated entities of regulatory interventions; and
- perceptions of regulated entities and other interested parties about the proportionality and effectiveness of regulatory approach and costs.

9.3 Regulators should measure their performance against the standards in paragraph 9.2 and regularly publish the results. To aid understanding, regulators should also explain how they measure their performance.

9.4 Local authorities and fire and rescue authorities are exempt from the requirements of paragraphs 9.2 and 9.3.

9.5 Regulators should ensure that their employees provide courteous and efficient services to regulated entities and others. They should take account of comments from regulated entities and other interested parties regarding the behaviour and activity of inspectors and other enforcement staff.

9.6 Regulators should provide effective and timely complaints procedures (including for matters in this Code) that are easily accessible to regulated entities and other interested parties. They should publicise their complaints procedures, with details of the process and likely timescale for resolution.

9.7 Complaints procedures should include a final stage to an independent, external, person. Where there is a relevant Ombudsman or Tribunal with powers to decide on matters in this Code, the final stage should allow referral to that body. However, where no such person exists, a regulator should, in consultation with interested parties, provide for further complaint or appeal to another independent person, for example, an independent professional body.

[14] As defined in footnote 2 above.

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Website: http://bre.berr.gov.uk/regulation

Publication date: 17 December 2007

URN: 07/1707

ISBN: 978-0-85605-712-0

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