

Draft Regulatory Enforcement and Sanctions Bill



In its 2005 Pre-Budget Report, the Government stated its intention to legislate in the area of regulatory enforcement. The draft Regulatory Enforcement and Sanctions Bill was presented to Parliament recently and attempts to provide a framework for “designated regulators” to carry out their roles in a more consistent, targeted and effective manner. The main points of interest in the draft Bill are:-

- Ministers are given the power to confer sanctioning powers on certain regulators. These “designated regulators” include the Health and Safety Executive, the Equal Opportunities Commission and the Financial Services Authority.
- Only certain “relevant offences” are covered by the draft Bill. Those include some offences under the Health and Safety at Work Act 1974.
- The proposed powers which a Minister may confer on a designated regulator are:-
 - Fixed monetary penalties
 - Discretionary requirements which can include monetary penalties and requiring the defaulter to take steps to prevent an event recurring
 - Permanent cessation of an activity where the designated regulator is satisfied that the activity being carried out by the defaulter presents a

serious risk of harm to human health or the environment, that the defaulter is committing a relevant offence and that the defaulter has a previous conviction for the offence

- Temporary cessation of an activity where the regulator believes the defaulter is carrying on an activity which constitutes a relevant offence that presents a significant risk of serious harm to human health, the environment or financial interests of consumers

The draft Bill provides that a regulator may accept from a defaulter an “enforcement undertaking” where the regulator has reasonable grounds to believe the defaulter has or continues to commit a relevant offence. An enforcement undertaking will require a defaulter within a specific period of time to take specific action to ensure the act or omission is not repeated or continued and it may also require the defaulter to take action to benefit any person affected by the act or omission, including the payment of money. Where a defaulter complies with such an undertaking he may not be convicted of the relevant offence in respect of the act or omission, nor may the regulator impose a fixed monetary penalty.

Comment

The draft bill seeks to extend the power of regulators dealing with matters of non-compliance by giving them authority to impose sanctions where the regulator believes certain offences are being committed. The draft bill provides the possibility for a regulator to deal with offenders outwith the court process with potentially serious consequences for a defaulter. Proposed penalties include the possibility of an unlimited fine (where the relevant offence may be tried before a jury) and the permanent cessation of a defaulter’s activities. It is interesting to note the Health and Safety Executive have indicated during the consultation process that they are happy with the procedures that are currently in place for enforcing health and safety legislation and they do not anticipate that they would seek to use the additional sanctions provided for in the draft bill.

We will issue further alerts as the draft Bill passes through Parliament but in the meantime if you have any queries please contact a member of our Health and Safety Unit.

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