



RESEARCH PAPER 08/61  
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# Regulatory Enforcement and Sanctions Bill [HL] Committee Stage Report

## Bill 103 of 2007-08

This is a report on the Committee Stage of the *Regulatory Enforcement and Sanctions Bill 2007-08*. The Bill is part of the Government's 'Better Regulation' policy agenda which aims to improve and simplify the way legislation (on any subject) is made and enforced with a view to reducing unnecessary burdens on business. One aspect of this policy is a general principle that enforcement should be focussed where the risks are greatest.

The Committee sat for four sittings on 17 and 19 June 2008. The remaining stages of the Bill will take place on 10 July 2008. Only one minor technical amendment related to parliamentary procedure was made. It has no substantive bearing on the Bill's intentions.

Vincent Keter

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# CONTENTS

|            |   |           |
|------------|---|-----------|
| <b>I</b>   | <b>Provisions of the Bill</b>                             | <b>5</b>  |
| <b>II</b>  | <b>Second Reading</b>                                     | <b>5</b>  |
| <b>III</b> | <b>Committee Stage</b>                                    | <b>7</b>  |
|            | 1. Local Better Regulation Office annual report           | 7         |
|            | 2. Enforcement of Local Better Regulation Office guidance | 7         |
|            | 3. Primary Authority Scheme                               | 8         |
|            | 4. Right to trial in criminal courts                      | 8         |
|            | 5. Sunset clause  | 8         |
|            | 6. Code of practice                                       | 8         |
|            | 7. The Government Amendment                               | 9         |
| <b>IV</b>  | <b>Select Committees</b>                                  | <b>9</b>  |
|            | 1. Regulatory Reform Committee                            | 9         |
|            | 2. Public Accounts Committee                              | 9         |
| <b>V</b>   | <b>Revised government documents</b>                       | <b>10</b> |



## I Provisions of the Bill

The Bill covers three broad areas: local regulatory activities; sanctioning powers; and the culture of regulatory enforcement. It extends to England and Wales, Scotland and Northern Ireland, with reservations.

Part 1 creates the Local Better Regulation Office, a statutory body to improve consistency of approach between central government, regulators and local authorities in enforcing regulations.

Part 2 provides a statutory framework for coordinating the treatment by local authority regulators of businesses operating across local authority boundaries by giving one single “primary authority” oversight of guidance and enforcement action.

Part 3 introduces powers to give some regulators access to a novel suite of civil sanctions as an alternative to criminal prosecution in courts. These are intended to promote better compliance by allowing regulators to adopt a more flexible and proportionate approach through restorative measures as well as punishing non compliance.

Part 4 provides a power to require regulators not to impose or maintain unnecessary burdens. This is intended to increase effectiveness and accountability in the work of regulators by promoting risk based principles and strategies.

## II Second Reading

The Bill passed Second Reading without division. Many of the issues that were also raised in Lords debates were maintained, in particular general comments about the burden of regulation on business, including administrative burdens; and the concerns about civil sanctions.

Opposition speeches focussed on the burden of regulation and successive government attempts to relieve it.<sup>1</sup> This topic and its history through present and past governments is covered in section II(B-D) of the Library Research Paper produced for Second Reading of the Bill.<sup>2</sup>

On the question of sanctions, opposition spokesman Jonathan Djanogly echoed the speeches made by Lord Lyell in the Lords:

On Third Reading in the other place, Lord Lyell said that in effect the Bill gave the regulators

“the power to be investigator, prosecutor, judge, jury and sentencer”.—[  
Official Report, House of Lords, 28 April 2008; Vol. 701, c. 26.]

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<sup>1</sup> [HC Deb 21 May 2008 cc335 – 338](#)

<sup>2</sup> Library Research Paper RP 08/46, *Regulatory Enforcement and Sanctions Bill [HL] 2007-08*, 16 May 2008

That is a matter of great concern. The combination of wide powers being granted to a large number of unaccountable regulators for a long list of offences could be both disproportionate and unnecessary.<sup>3</sup>

Lord Lyell's concerns about small business were also repeated:

What is clear is that this part of the Bill could put small businesses at a significant disadvantage yet again. Whereas medium and larger businesses will be quite able to pursue the tribunal and appeals processes, most small firms will have neither the time nor the wherewithal. Ordinary people such as owners of small shops, farmers and drivers of vehicles are likely to feel compelled just to pay up and get on with trying to run their businesses and earn a living, rather than allowing their time to be taken up with such procedures. If we get these measures wrong, they could be deeply resented by many thousands of small businesses and sole traders across the country.<sup>4</sup>

Parallel policy developments contained in the Consumer Protection Review were raised:

**Andrew Miller:** My hon. Friend is making an important point about the outcomes of the Hampton review. Is there a parallel in the Bill to address the needs of consumers, where scams are operated that cross boundaries? He mentioned Cambridge, whose city council was incredibly helpful to me when I was pursuing a case that crossed boundaries. However, both the council and Cambridgeshire police authority faced problems because of current law. Does the Bill address that aspect, too?

**Mr. McFadden:** That aspect is addressed by the consumer law review, which is led by my hon. Friend the Under-Secretary of State. Part of the function of that review is precisely to support the kind of agenda that my hon. Friend mentions.<sup>5</sup>

This review is described on the BERR website as follows:

### **Consumer Protection Review**

A government review of the consumer protection regime is looking at where legislation can be simplified, while ensuring the public gets a fair deal and high-quality products. As markets and technologies continue to develop at pace, our legislative system has to keep up and provide consumers with adequate protection.

Consumer protection regulations have developed over several decades and there are now more than 100 different pieces of legislation, which are sometimes inconsistent and inflexible. These have also caused a huge administrative burden for businesses.<sup>6</sup>

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<sup>3</sup> [HC Deb 21 May 2008 c341](#)

<sup>4</sup> [HC Deb 21 May 2008 c341](#)

<sup>5</sup> [HC Deb 21 May 2008 c329](#)

<sup>6</sup> BERR, [Protecting Consumers](#)

Another issue, as yet unresolved, relates to the technical legal question of whether local authorities could continue to access the civil courts in their enforcement activities. This was raised by Judy Mallaber:

**Judy Mallaber:** Will my hon. Friend discuss with local authority organisations their ability to use the civil courts and to have representation in them to ensure that they are able to take cases through those procedures rather than just through the criminal courts? I know that they still have concerns about their ability to get an audience in the civil courts and about costs. I do not know the details of those issues, but will he discuss them further with those organisations?

**Mr. McFadden:** I am always happy to discuss such matters with local authorities.<sup>7</sup>

### III Committee Stage

The Bill was debated in Committee on the 17 and 19 June.<sup>8</sup> There were six divisions on opposition amendments all of which were negated.

#### 1. Local Better Regulation Office annual report

Mark Prisk pressed an amendment which would have required the Government to lay before Parliament a copy of the annual report of the Local Better Regulation Office (LBRO) within 30 day of receipt.<sup>9</sup> The minister objected on the following ground:

**Mr. McFadden:** My hon. Friend asks whether there is an informal rule outside 30 days. We certainly try to deal with matters each year before we go into recess. We do not do so by a number of days, but we try to avoid undue delay. The precedents that I quoted in respect of Ofsted and Natural England do not have such time limits. I completely agree with the sentiment of avoiding undue delay, but to put a number of days in the Bill might lead us, for the reasons that I have explained, to unintended consequences. I hope that accuracy would be accepted as the main objective, and if the accounts are accurate there should certainly be no undue delay in tabling them.<sup>10</sup>

#### 2. Enforcement of Local Better Regulation Office guidance

A division also took place on Mark Prisk's amendments in relation to the powers given to the LBRO to enforce its guidance to local authorities. These echoed concerns expressed in the Lords that LBRO is an unelected body and therefore giving it powers to compel elected local authorities could raise issues of proper accountability. The amendments sought to give these powers instead to ministers.<sup>11</sup>

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<sup>7</sup> [HC Deb 21 May 2008 c333](#)

<sup>8</sup> Regulatory Enforcement and Sanctions Bill [Lords] Public Bill Committee, Tuesday 17 June 2008 ([Morning](#)) ([Afternoon](#)); Thursday 19 June 2008 ([Morning](#)) ([Afternoon](#))

<sup>9</sup> PBC Deb [17 June 2008 \(morning\) cc 11 – 15](#)

<sup>10</sup> PBC Deb [17 June 2008 \(morning\) c13](#)

<sup>11</sup> PBC Deb [17 June 2008 \(morning\) cc 20 – 26](#)

### 3. Primary Authority Scheme

Part 2 of the Bill concerns the Primary Authority Scheme. The Committee divided on an amendment by Mark Prisk which dealt with Orders under this part, seeking to subject them to the affirmative procedure. The Minister responded:

There are four specific order-making powers in this part. The first of these, under clause 24, allows for the legislative scope of the primary authority scheme to be defined for Scotland and Northern Ireland. The next two orders in clauses 28 and 29 allow for exclusions and exemptions to the primary authority scheme to be specified. We discussed those in the debate on clause 29.

Finally, schedule 4 allows for detailed provision to be made for procedures in which matters raised by the primary authority scheme go to arbitration. The Government made it clear in their submission to the Delegated Powers and Regulatory Reform Committee that we believed these to be essentially technical matters, and that the negative resolution procedure was appropriate in those circumstances.<sup>12</sup>

### 4. Right to trial in criminal courts

A division took place on an amendment by Lorely Burt which sought to protect the constitutional right to public trial in respect of criminal charges:

**Lorely Burt:** The amendments all have the same purpose. The provisions would enable the business to opt for court action, if preferred, even though it could face the prospect of a criminal conviction as a result, thereby ensuring that the option was available at the request not only of the regulator but also of the company. Businesses should not have to face the risk of unsubstantiated damage to their reputations until and unless they have been proved guilty. For many businesses, the risk to loss of reputation is worse than the cost of the appeal. Consequently, many businesses would take the sanctioning decision to appeal, and they should have the option of taking the decision through a criminal court, if they so wish.<sup>13</sup>

### 5. Sunset clause

Mark Prisk tabled New Clause 2 which he pressed to division. This was a sunset clause subjecting the Bill in its entirety and all secondary legislation made under it to a general time limitation expiring on 1 January 2014.<sup>14</sup>

### 6. Code of practice

This was accompanied by New Clause 3 which also went to division:

#### **Duty to secure observance of Code of Practice**

‘Where any local authority has been granted powers under Part 3 of this Act, the LBRO shall have the duty or reviewing and, if appropriate, certifying every three

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<sup>12</sup> PBC Deb [17 June 2008 \(afternoon\) cc 56 – 58](#)

<sup>13</sup> PBC Deb [17 June 2008 \(afternoon\) cc 69 – 72](#)

<sup>14</sup> PBC Deb [19 June 2008 \(afternoon\) cc 117 – 121](#)

years whether local authorities are compliant with the provisions of any Code issued under Section 22 of the Legislative and Regulatory Reform Act 2006.’.—  
[Mr. Prisk.]<sup>15</sup>

The Minister said that he was not against the idea of sunset clauses but thought that it would be unwise in this case; since the Bill delivers regulatory simplification in enforcement a sunset clause would have the opposite effect of the normal intention of such clauses.

## 7. The Government Amendment

Only one amendment was made: “Clause 77, page 37, line 30, leave out subsection (2).” The Minister explained the amendment as follows:

The amendment will remove the privilege amendment made in another place. It is a technical change, but an important one. As hon. Members are aware, the financial powers of the other place are restricted by the rights and privileges of the House and by the Parliament Acts. As the Bill originated in the other place and contains financial powers, a privilege amendment was added to it before its introduction in this House to ensure that the House’s financial privileges were not infringed.<sup>16</sup>

## IV Select Committees

### 1. Regulatory Reform Committee

On 20 May 2008 the Regulatory Reform Committee interviewed Councillor Keith Evans, Local Government Association (Independent), Ms Wendy Martin, Senior Public Affairs Officer, LACORS, and Councillor Andy Sutton, Local Government Association (Conservative).<sup>17</sup> This was subsequently referred to by Judy Mallaber at Second Reading.<sup>18</sup>

### 2. Public Accounts Committee

The Public Accounts Committee published a report on 1 July which looked at the Administrative Burdens Reduction programme.<sup>19</sup> Most significantly, this challenged the basis of a general assumption that there is a link between the level of regulation and productivity growth. It made various recommendations including:

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<sup>15</sup> PBC Deb [19 June 2008 \(afternoon\) c121](#)

<sup>16</sup> PBC Deb [19 June 2008 \(afternoon\) c117](#)

<sup>17</sup> Regulatory Reform Committee, *Getting Results: The Better Regulation Executive and the Impact of the Regulatory Reform Agenda*, [Uncorrected Evidence](#), 20 May 2008

<sup>18</sup> [HC Deb 21 May 2008 c328](#)

<sup>19</sup> House of Commons Committee of Public Accounts, [Reducing the cost of complying with regulations: the delivery of the Administrative Burdens Reduction programme 2007](#), Thirty-second Report of Session 2007–08, HC 363, 1 July 2008

- Government should assess the benefits as well as the costs of regulation, and only consider changes in the light of a balanced assessment of both. “The £20 billion estimate of the total administrative burden is not statistically reliable.”
- The Better Regulation Executive should set the target for reducing burdens based on an assessment of what was achievable in each case. The BRE had set targets “without assessment of what was achievable”.
- Priority should be given to relieving pressures on small businesses where it is practical to do so.

## V Revised government documents

A revised guide to the Bill was published in May 2008.<sup>20</sup> The Impact Assessment for the Bill initially prepared prior to its introduction in the Lords estimated annual net benefits of the Bill as a whole to be £61-£146 million.<sup>21</sup> A revised Impact Assessment was issued in May 2008. This contains an increased estimate of annual net benefits at £79 - £248 million.<sup>22</sup> The Minister commented on the revised estimate in the course of the debate at Second Reading of the Bill:

On the costs and benefits of the measures, taken together, we estimate that the overall benefits for business could be up to £200 million through better enforcement, lower legal costs and the variety of enforcement actions.<sup>23</sup>

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<sup>20</sup> BERR, [A Guide the Regulatory Enforcement and Sanctions Bill](#), November 2007

<sup>21</sup> Regulatory Enforcement and Sanctions Bill Impact Assessment, November 2007 (no longer available online – A copy has been attached to the relevant Library Bill Gateway)

<sup>22</sup> [Regulatory Enforcement and Sanctions Bill Impact Assessment](#), May 2008

<sup>23</sup> [HC Deb 21 May 2008 c333](#)